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Ontario Labour relations board  
Report  
1967



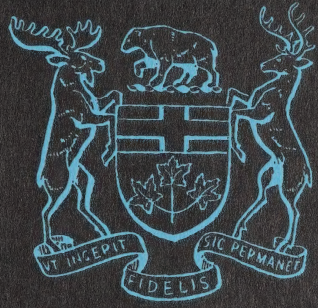




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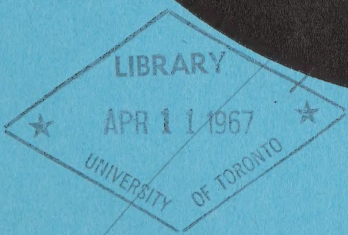
Government  
Publications

JANUARY 1967



ONTARIO

# *Monthly Report*



**ONTARIO LABOUR RELATIONS BOARD**







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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1967

BARGAINING AGENTS CERTIFIED DURING JANUARY

No Vote Conducted

12020-66-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L, TORONTO (APPLICANT) v. CROWN CORK & SEAL COMPANY LIMITED (RESPONDENT) v. CROWN CORK & SEAL EMPLOYEES ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (208 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT PERSONS CLASSIFIED BY THE RESPONDENT AS OVEN STRIPPERS AND COATER OPERATORS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS CAMERAMEN ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

(APPLICANT CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, SECURITY GUARDS, RESEARCH LABORATORY STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY THE BOARD'S CERTIFICATE ISSUED TO THE APPLICANT IN THIS MATTER ON DECEMBER 19TH, 1966." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(INTERVENER CERTIFIED).

12077-66-R: TOBACCO WORKERS INTERNATIONAL UNION AFL-CIO-CLC (APPLICANT) v. IMPERIAL TOBACCO COMPANY (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT MANAGERS AND SUPERVISORS, PERSONS ABOVE THE RANKS OF MANAGER AND SUPERVISOR, THE CONFIDENTIAL SECRETARY TO THE PLANT MANAGER, NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 760 ).

12344-66-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL UNION 185 (APPLICANT) V. COLEMAN PACKING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT EXECUTIVE OFFICERS, BUYERS, SALESMEN, OFFICE AND CLERICAL STAFF, INCLUDING ALL IN THE SUPERINTENDENT'S OFFICE AND TIME OFFICE, SUPERINTENDENTS, CHIEF ENGINEER, FOREMEN, CHEMICAL LABORATORY WORKERS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (20 EMPLOYEES IN THE UNIT).

12377-66-R: TEXTILE WORKERS UNION OF AMERICA AFL-CIO, CLC (APPLICANT) V. MONTEX APPAREL INDUSTRIES LIMITED, MONARCH KNITTING DIVISION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT OFFICE SUPERVISORS AND PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

12452-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 865 (APPLICANT) V. LAKEHEAD UNIVERSITY (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS STEAM PLANT AT PORT ARTHUR, SAVE AND EXCEPT CHIEF ENGINEER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

12454-66-R: UNITED GARMENT WORKERS OF AMERICA LOCAL #253 (APPLICANT) V. PARIS SPORTSWEAR LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, DESIGNERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 775 ).

12483-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #3189 (APPLICANT) V. SHELVING DISPLAYS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).



(SEE INDEXED ENDORSEMENT PAGE 785 ).

12486-66-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. CAROUSEL INN (OSHAWA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, CHIEF ACCOUNTANT, CHIEF ENGINEER, HEAD HOUSEKEEPER, HEAD CHEF, DESK CLERKS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD GRANTED TO THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 280, DATED NOVEMBER 29TH, 1966." (13 EMPLOYEES IN THE UNIT).

12492-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC. (APPLICANT) v. RCA VICTOR COMPANY, LTD. (RESPONDENT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, SECURITY GUARDS, ENGINEERING AND TECHNICAL STAFF, OFFICE STAFF, CONFIDENTIAL SECRETARIES TO FOREMEN AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED NOVEMBER 25, 1966, ISSUED TO THE CANADIAN UNION OF OPERATING ENGINEERS." (47 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 793 ).

12504-66-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) v. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (74 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(DISMISSED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT PORT PERRY, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (38 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(CERTIFIED).

(SEE INDEXED ENDORSEMENT PAGE 797 ).

12512-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NATIONAL STEEL CAR CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, SECURITY GUARDS, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (1573 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TIME STUDY, TIME KEEPING, FIRST AID, AND PLANT CLERICAL PERSONNEL ARE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

12541-66-R: WESTERN MOULDERS' UNION (APPLICANT) V. WESTERN FOUNDRY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINGHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ENGINEERING OFFICE STAFF, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (60 EMPLOYEES IN THE UNIT).

12543-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN THE TOWNSHIP OF GLOUCESTER REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER AND MEAT MANAGER." (20 EMPLOYEES IN THE UNIT).

12551-66-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. DIRK KOOMANS AND SONS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT EMPLOYEES ENGAGED IN THE YARD OPERATIONS OF THE RESPONDENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

THE RESPONDENT IN THIS CASE IS ENGAGED IN THE DISMANTLING AND DEMOLISHING OF RESIDENTIAL, COMMERCIAL AND INDUSTRIAL BUILDING STRUCTURES. THE RESPONDENT DOES NOT ENGAGE IN ANY BUILDING WORK. HAVING REGARD TO THESE CONSIDERATIONS, IT IS OUR VIEW THAT THE GRANTING OF AN ALL EMPLOYEE UNIT IN THIS CASE WOULD NOT LIKELY LEAD TO ANY WORK ASSIGNMENT DISPUTE. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD FURTHER FOUND THE ABOVE UNIT TO BE APPROPRIATE.



12552-66-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1250 (APPLICANT) V. JOHN R. DODGE CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

12555-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. BATHURST CONTAINERS LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN ST. THOMAS." (2 EMPLOYEES IN THE UNIT).

12557-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE COUNTY OF MIDDLESEX (RESPONDENT).

UNIT: "ALL JAIL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT LIEUTENANT, PERSONS ABOVE THE RANK OF LIEUTENANT AND SECRETARY OF THE GOVERNOR." (27 EMPLOYEES IN THE UNIT).

12563-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. STUART HOUSE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

12564-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ONTARIO UNDERGROUND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (2 EMPLOYEES IN THE UNIT).

IT IS NOT THE POLICY OF THE BOARD TO RESTRICT A CONSTRUCTION LABOURERS BARGAINING UNIT TO EMPLOYEES ENGAGED IN SEWER AND WATER MAIN CONSTRUCTION. IN METROPOLITAN TORONTO AND VICINITY, THE PRACTICE HAS BEEN TO DISTINGUISH BETWEEN THOSE CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS AND THOSE ENGAGED IN OTHER TYPES OF CONSTRUCTION. WE SEE NO REASON FOR DEPARTING FROM THAT PRACTICE IN THE PRESENT CASE.

12578-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 392 (APPLICANT) V. TRENT METALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

12581-66-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. BORG FABRICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ELMIRA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, LABORATORY EMPLOYEES AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (88 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12584-66-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. DIXIE CUP COMPANY (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (77 EMPLOYEES IN THE UNIT).

12587-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, (CLC) (AFL-CIO) LOCAL 527 (APPLICANT) V. LEECON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12589-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. GEORGIAN FLOORING & WOOD PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CHIEF ENGINEER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

12590-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PHIN UNIVERSAL DIVISION OF CANADIAN STACKPOLE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (106 EMPLOYEES IN THE UNIT).

12594-66-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. GEORGE W. ENDRESS COMPANY LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (106 EMPLOYEES IN THE UNIT).

12595-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. INTER-COUNTY CONCRETE PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUNNVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

12598-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. PLANT PRODUCTS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT CREDIT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

12601-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CANTEEN OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE CAFETERIA AT THE KELLOGG COMPANY OF CANADA, LIMITED, AT LONDON, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

12603-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. PILE FOUNDATIONS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT WHEN IT REFERS TO THE DISTRICT OF KENORA, IT INCLUDES THEREIN THE PATRICIA PORTION OF THE DISTRICT OF KENORA.

12612-66-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. KENORA BRAKE AND AUTO SUPPLY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12614-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. SARNIA SCAFFOLDS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12619-66-R: CANADIAN UNION OF OPERATING ENGINEERS (LOCAL 101) (APPLICANT) V. GIBSON WILLOUGHBY LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT THE BERKLEY HOUSE, 360 BAY STREET, TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

12646-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. VALENTINE ENTERPRISES CONTRACTING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12647-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SAM COSENTINO LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

12473-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT BLENHEIM, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).



NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

5

12490-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CHRYSLER CANADA LTD. (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA LOCAL 4175 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CASTING PLANT IN THE TOWN-SHIP OF ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (201 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND THE BOARD'S USUAL PRACTICE WITH RESPECT TO DESCRIPTION OF BARGAINING UNITS IN SIMILAR SITUATIONS).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	
NUMBER OF PERSONS WHO CAST BALLOTS	187
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	140
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	46

190

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12144-66-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. DRYDEN 5¢ TO \$1.00 STORE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

2

12222-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DARLING AND COMPANY OF CANADA LIMITED (RESPONDENT) V. EMPLOYEES' ORGANIZATION, DARLING & CO. OF CANADA LTD. (INTERVENER).

12231-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DARLING AND COMPANY OF CANADA LIMITED (RESPONDENT) V. EMPLOYEES' ORGANIZATION, DARLING & Co. OF CANADA LTD. (INTERVENER). (3 EMPLOYEES).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CHATHAM PLANT AND GALT AND LONDON STATIONS SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (50 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT PERSONS CLASSIFIED AS SHIFT ENGINEER COOKER OPERATORS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		44
NUMBER OF PERSONS WHO CAST BALLOTS		44
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERNATIONAL CHEMICAL WORKERS UNION	28	
NUMBER OF BALLOTS MARKED IN FAVOUR OF EMPLOYEES' ORGANIZATION, DARLING & Co. OF CANADA LTD.	15	

(INTERNATIONAL CHEMICAL WORKERS CERTIFIED).

(THE APPLICATION OF CANADIAN UNION OF OPERATING ENGINEERS WAS DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 762 ).

12388-66-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (APPLICANT) V. MERCURY TOOL & STAMPING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (121 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		97
NUMBER OF PERSONS WHO CAST BALLOTS		96
NUMBER OF SPOILED BALLOTS	2	
MISSING BALLOT	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	66	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	27	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

12374-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. GEORGE ARMSTRONG Co. LIMITED (RESPONDENT). (2 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 773 ).

12487-66-R: THE CUSTODIAN AND MAINTENANCE ASSOCIATION OF THE KITCHENER PUBLIC SCHOOL BOARD (APPLICANT) V. KITCHENER PUBLIC SCHOOL BOARD (RESPONDENT). (59 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 789 ).

12500-66-R: LE SYNDICAT NATIONAL DES TRAVAILLEURS DE CUIR ET DE PLASTIQUE (CSN-CNTU) (APPLICANT) V. HUGH CARSON COMPANY LIMITED (RESPONDENT) V. THE INDEPENDENT EMPLOYEES' UNION OF HUGH CARSON COMPANY LIMITED (INTERVENER). (212 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 795 ).

12516-66-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 353 (APPLICANT) V. BARKER ELECTRIC COMPANY (RESPONDENT). (14 EMPLOYEES).

12524-66-R: THE LONDON MOULDERS AND MANUFACTURING ASSOCIATION (APPLICANT) V. RAMSDEN MANUFACTURING LIMITED (RESPONDENT). (54 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12437-66-R: SIGN AND PICTORIAL PAINTERS, LOCAL 1630, OF THE BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA (APPLICANT) V. DISPLAY INDUSTRIES OF CANADA (EASTERN) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	11

12455-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. INTERNATIONAL TOOLS, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (352 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED BY THE RESPONDENT PERFORMING FOREMAN FUNCTIONS ARE DESIGNATED BY THE



RESPONDENT AS "GROUP LEADERS" AND THEY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	337
NUMBER OF PERSONS WHO CAST BALLOTS	331
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	135
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	195

12461-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. LEDCO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (56 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	55
NUMBER OF PERSONS WHO CAST BALLOTS	55
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	31

12518-66-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH C.L.C. A.F. OF L. C.I.O. (APPLICANT) V. THE BREITHAUPT LEATHER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CAMPBELLFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	23
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	14

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

12579-66-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, TEAMSTERS LOCAL 847 (APPLICANT) V. GORDON A. MACEachern LTD. (RESPONDENT). (8 EMPLOYEES).

12588-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. BATHURST CONTAINERS LIMITED (RESPONDENT). (3 EMPLOYEES).

12600-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES & CANADA (APPLICANT) V. GAMBIN BROTHERS LIMITED (RESPONDENT). (3 EMPLOYEES).

12613-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. CEM-AL ERECTORS LTD. (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING JANUARY

12286-66-R: GERARD BELLEMARE (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (RESPONDENT). (GRANTED).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF RAMSAY INDUSTRIES LIMITED IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	9

12470-66-R: PATRICK J. HARTE (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF LEIGH METAL PRODUCTS LIMITED AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (49 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	45

NUMBER OF PERSONS WHO CAST BALLOTS	42
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	14
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	28

12586-66-R: GROUP OF EMPLOYEES, IAN HOOD, SPOKESMAN (APPLICANT) V.  
RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461  
(RESPONDENT). (203 EMPLOYEES). (WITHDRAWN).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JANUARY

12577-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC.  
(APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (GORE BAY BRANCH)  
(RESPONDENT) V. THE SUDBURY GENERAL WORKERS' UNION, LOCAL 101, C.I.L.C.  
(PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JANUARY

12521-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V.

ANDERSEN, BENNY	HEBERT, LEO	PENNY, BEN
ARSENEAU, BERNARD	HOWARD, STEPHEN	PRAGER, KARL, SR.
BEAUMONT, BRIAN	HRAPCHAK, WALTER	PRAGER, KARL
BEAUVAIS, THOMAS	HUARD, LEO	RAYMOND, JEAN PAUL
BEGIN, BERARD	JONES, GERALD	REID, RUSSELL
BERGERON, FRANK	KENSELLA, LLOYD	RIGHARDS, PHIL
BEYFUSS, KLEMENS	KULCHAR, JOHN	ROBERTSON, JOHN
BRANT, EARL	LABATT, LAWRENCE	ROMANO, FRED
BRIDGEMAN, MICHAEL	LABATT, TENNYS	RUDOLPH, ERNEST
BRODERS, BERNARD	LACROIX, HARRY	SQUISSATO, EDMUND
BRODERS, SYLVESTER	LA FLEUR, JEAN	STRUCEL, LOUIS
BROWN, OSCAR	LEBLANC, PAUL	TAYLOR, JAMES
BRULE, ROGER	LEPINE, LENNOX	THIBODEAU, RAYMOND
CARPANINI, ROBERT	MACLENNAN, PHILIP	THOMAS, JOSEPH
COLLIER, DOUGLAS	MARINO, PALMO	TRENTIN, ANTHONY
CORBETT, R. WILLIAM	MAZNIK, JOZEF	TROTTER, RICHARD
COX, JOHN	MCDONALD, JAMES	TROTTIER, CYR
CROSS, RONALD	MCMULTY, MICHAEL	TRAYNOR, ALLAN
CRYAN, THOMAS	MCRAE, MYRLE	TURNER, THOMAS
CVETINOVIC, DOBRIVOJE	MELANSON, CHARLES	VASILIS, ELMAR
DALES, FRANK	MEZALS, ALEX	VINCENT, BENJAMIN
DELANEY, DENIS	MIHALDINECZ, GEORGE	WEBBER, WILLIAM
EASY, VICTOR	MILLEN, MAXWELL	WELLER, DESMOND
FULTON, GEORGE	MONSON, CLIFFORD	WETMORE, TERRY
GALLANT, LOUIS	MORIN, CLARENCE	WHITE, GEORGE
GAMBLIN, PETER	MULLINS, DONALD	WINKLER, JOHN
HARTGERINK, HENRY	NANOS, DANNY	YETMAN, CHESLEY
HEBERT, EDMOND	PAGE, FERDINAND	ZONEY, HARVEY

(RESPONDENTS). (GRANTED).



(SEE INDEXED ENDORSEMENT PAGE 803 ).

12522-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)  
V. KARL ABRAMOVITZ, ET AL (RESPONDENTS). (WITHDRAWN).

12548-66-U: ALGOMA STEEL CORPORATION LIMITED (APPLICANT) V. BROTHERHOOD  
OF RAILROAD TRAINMEN, LODGE 611 (RESPONDENT). (DISMISSED).

- AND -

12549-66-U: ALGOMA STEEL CORPORATION LIMITED (APPLICANT) V. BROTHERHOOD  
OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LODGE 606 (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 814 ).

12622-66-U: FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED (APPLICANT)  
V. VINCENT ANTHONY, ET AL (RESPONDENTS). (WITHDRAWN).

12629-66-U: EMCO LIMITED (APPLICANT) V. MR. J. DULAJ, ET AL (RESPONDENTS).  
(WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

12201-66-U: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL, CIO, CLC,  
(APPLICANT) V. WEBSTER MFG (LONDON) LTD. (RESPONDENT). (WITHDRAWN).

12431-66-U: THE UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA,  
AFL-CIO, THROUGH ITS AGENT LOCAL 30 (APPLICANT) V. HOUSE OF BRAEMORE  
UPHOLSTERED FURNITURE (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 815 ).

12458-66-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)  
AND ITS LOCAL 531 (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED AND  
NORTHERN ELECTRIC OFFICE EMPLOYEES ASSOCIATION (RESPONDENTS). (WITHDRAWN).

12560-66-U: LOCAL 800, OF THE UNITED ASSOCIATION OF JOURNEYMEN &  
APPRENTICES OF THE PIPEFITTING INDUSTRY OF CANADA & U.S.A. (APPLICANT) V.  
THE RALPH M. PARSONS CONSTRUCTION Co. OF CANADA LTD. (RESPONDENT).  
(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 817 ).

12566-66-U: CANADIAN ACME SCREW AND GEAR LIMITED (APPLICANT) V. FRANK  
WILSON, ET AL (RESPONDENTS). (WITHDRAWN).

12567-66-U: CANADIAN ACME SCREW AND GEAR LIMITED (APPLICANT) V. FRANK  
WILSON, ET AL (RESPONDENTS). (WITHDRAWN).

12606-66-U: AILEEN SCOTT (APPLICANT) V. THE CANADIAN H. W. GOSSARD Co.  
LIMITED (RESPONDENT). (WITHDRAWN).

12607-66-U: ELAINE SCANLON (APPLICANT) V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT). (WITHDRAWN).

12608-66-U: CAROLE ROHRER (APPLICANT) V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT). (WITHDRAWN).

12609-66-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT). (WITHDRAWN).

12625-66-U: FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED (APPLICANT) V. VINCENT ANTHONY, ET AL (RESPONDENTS). (WITHDRAWN).

12628-66-U: EMCO LIMITED (APPLICANT) V. MR. J. DULAJ, ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF  
DURING JANUARY

12427-66-U: TEXTILE WORKERS UNION OF AMERICA (COMPLAINANT) V. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 819).

12439-66-U: ROY W. THOMPSON (COMPLAINANT) V. SCARBORO BOARD OF EDUCATION (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 822).

12484-66-U: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197, HAMILTON, ONTARIO (COMPLAINANT) V. BRITISH IMPERIAL VETERANS' ASSOCIATION OF HAMILTON INC., 145 MAIN ST. E., HAMILTON, ONTARIO (RESPONDENT).

12511-66-U: ARNOLD LESLIE PIERCE (COMPLAINANT) V. LAWRENCE SPEIGHT (RESPONDENT).

12515-66-U: LOCAL UNION 353 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (COMPLAINANT) V. BARKER ELECTRIC (RESPONDENT).

12582-66-U: MR. IAN HOOD (COMPLAINANT) V. GENERAL BAKERIES LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 823).

12617-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT; V. POWER CONTROLS DIVISION MIDLAND-ROSS OF CANADA LTD. (RESPONDENT).

12618-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. POWER CONTROLS DIVISION MIDLAND-ROSS OF CANADA LTD. (RESPONDENT).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

12544-66-M: SUDBURY GENERAL WORKERS UNION, LOCAL 101, CANADIAN LABOUR CONGRESS, AND THE SUDBURY PRODUCER AND CONSUMER CO-OPERATIVE DAIRY LIMITED (APPLICANTS). (GRANTED).

12545-66-M: SUDBURY GENERAL WORKERS UNION, LOCAL 101, CANADIAN LABOUR CONGRESS, AND STANDARD DAIRY LIMITED (APPLICANTS). (GRANTED).

12547-66-M: SUDBURY GENERAL WORKERS UNION, LOCAL 101, CANADIAN LABOUR CONGRESS, AND PALM DAIRIES LIMITED (APPLICANTS). (GRANTED).

12556-66-M: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, AND YORK COUNTY HOSPITAL (APPLICANTS). (GRANTED).

12585-66-M: TEXTILE WORKERS' UNION OF AMERICA, SOUTH WESTERN ONTARIO TEXTILE JOINT BOARD, AND ITS LOCAL NUMBER 741, AND HARDING CARPETS LIMITED (APPLICANTS). (GRANTED).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING JANUARY

12403-66-M: INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL 35 (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 825).

APPLICATION FOR DETERMINATION UNDER SECTION 79A DISPOSED OF DURING JANUARY

12550-66-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (TRADE UNION) V. GERARD BUILDERS OF NORTH BAY LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 826).

JURISDICTIONAL DISPUTES

12456-66-JD: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) AND ITS LOCAL 531 (COMPLAINANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT). V. NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION (INTERVENER).

(SEE INDEXED ENDORSEMENT PAGE 828).



12653-66-JD: CANADIAN ICE MACHINE COMPANY, LIMITED, 65 VILLIERS STREET, TORONTO 2, ONTARIO (COMPLAINANT) V. THE OPERATING ENGINEERS UNION LOCAL 793 (RESPONDENT). (WITHDRAWN).

12654-66-JD: CANADIAN ICE MACHINE COMPANY, LIMITED, 65 VILLIERS STREET, TORONTO 2, ONTARIO (APPLICANT) V. THE OPERATING ENGINEERS UNION LOCAL 793 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12472-66-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B. S. E. I. U. (APPLICANT) V. NORVIEW HOME FOR THE AGED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

12513-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. BOYLE-MIDWAY (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES ( OBJECTORS). (REQUEST DENIED).  
(SEE INDEXED ENDORSEMENT PAGE 835 ).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

12439-66-U: ROY W. THOMPSON (COMPLAINANT) V. SCARBORO BOARD OF EDUCATION (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 836 ).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79(3)

11892-66-M: LOCAL 545, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWNSHIP OF SCARBOROUGH (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 842 ).

12510-66-M: UNITED STEELWORKERS OF AMERICA (LOCAL UNION NO. 6398) (APPLICANT) V. SAMUEL, SON & CO. LIMITED (RESPONDENT). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

12077-66-R: TOBACCO WORKERS INTERNATIONAL UNION AFL-CIO-CLC (APPLICANT) V. IMPERIAL TOBACCO COMPANY (ONTARIO) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:

JANUARY 11, 1967.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED NOVEMBER 25TH, 1966, IN THIS MATTER.
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT MANAGERS AND SUPERVISORS, PERSONS ABOVE THE RANKS OF MANAGER AND SUPERVISOR, THE CONFIDENTIAL SECRETARY TO THE PLANT MANAGER, NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT P. THOMAS AND ROBERT DANNACKER EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.
5. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT MRS. M. KEEN IS NOT AN EMPLOYEE OF THE RESPONDENT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT AND THAT F. L. MCINTYRE IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.
6. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT DRAFTSMEN ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.
7. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT WHILE MRS. FATT MAY HAVE SOME ISOLATED FUNCTIONS THAT MAY BE DESCRIBED AS CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS, THEY ARE MERELY INCIDENTAL TO HER MAIN FUNCTIONS AND ACCORDINGLY THE BOARD DECLARES THAT MRS. VERA FATT IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. IN ARRIVING AT ITS DECISION WITH RESPECT TO MRS. FATT, THE BOARD HAS HAD REGARD TO THE DECISION IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, BOARD FILE NO. 10775-65-R, SEPTEMBER 14TH, 1966, WHEREIN THE BOARD STATED IN PART AS FOLLOWS:

SIMILAR CRITERIA APPLY TO PERSONS ALLEGED TO BE EMPLOYED IN CONFIDENTIAL CAPACITIES IN MATTERS RELATING TO LABOUR RELATIONS. A PERSON TO BE EXCLUDED UNDER THIS PROVISION MUST BE "EMPLOYED IN A CONFIDENTIAL CAPACITY" I.E., SUCH CAPACITY MUST BE PART OF HIS REGULAR DUTIES. AN ACCIDENTAL OR ISOLATED INVOLVEMENT IN SOME ASPECT OF LABOUR RELATIONS IS NOT SUFFICIENT, IN OUR VIEW, TO EXCLUDE A PERSON FROM COLLECTIVE BARGAINING. HOWEVER, A REGULAR MATERIAL INVOLVEMENT IN MATTERS RELATING TO LABOUR RELATIONS WHICH ARE

CONFIDENTIAL BECAUSE THEIR DISCLOSURE WOULD ADVERSELY AFFECT THE INTEREST OF THE EMPLOYER WOULD EXCLUDE A PERSON PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT. AS CAN READILY BE SEEN, THE DEGREE OF INVOLVEMENT AND THE EXTENT OF THE CONFIDENTIAL NATURE OF THE MATTERS DEALT WITH BECOME IMPORTANT FACTORS TO BE CONSIDERED IN DETERMINING EXCLUSIONS UNDER THESE PROVISIONS.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: JANUARY 11, 1967.

1. WHILE I AGREE THAT A CERTIFICATE SHOULD ISSUE TO THE APPLICANT, I MUST DISSENT IN RESPECT OF THE INCLUSION OF MRS. VERA FATT, AN EMPLOYEE OF THE RESPONDENT, IN THE BARGAINING UNIT.

2. IT IS CLEAR FROM THE UNCONTRADICTED EVIDENCE OF MR. W. A. GRAY, TECHNICAL SUPERINTENDENT OF THE RESPONDENT, AS SET OUT ON PAGE 10 OF THE REPORT OF THE EXAMINER, THAT IN THE COURSE OF HER REGULAR DUTIES AND ON HIS INSTRUCTIONS, MRS. FATT TYPES MATERIAL WHICH IS CONSIDERED CONFIDENTIAL IN RESPECT OF LABOUR RELATIONS. CONSEQUENTLY, I AM IMPELLED TO FIND UNDER THE PROVISIONS OF SUB SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT THAT MRS. FATT IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS NOT DEEMED TO BE AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

12222-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. DARLING AND COMPANY OF CANADA LIMITED (RESPONDENT) V. EMPLOYEES' ORGANIZATION, DARLING & CO. OF CANADA LTD. (INTERVENER).

- AND -

12231-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DARLING AND COMPANY OF CANADA LIMITED (RESPONDENT) V. EMPLOYEES' ORGANIZATION, DARLING & CO. OF CANADA LTD. (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: DONALD C. MACDONALD FOR INTERNATIONAL CHEMICAL WORKERS UNION, C. J. SCOTT FOR CANADIAN UNION OF OPERATING ENGINEERS, JOHN P. SANDERSON AND LLOYD BATHURST FOR THE COMPANY, C. E. PERKINS FOR THE EMPLOYEES' ORGANIZATION.



DECISION OF THE BOARD:

JANUARY 20, 1967.

1. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD ON OCTOBER 13TH, 1966 IN THESE MATTERS, THE BOARD DIRECTED THAT THESE MATTERS BE LISTED FOR HEARING WITH RESPECT TO THE RESPONDENT'S OBJECTIONS TO THE REPRESENTATION VOTE HELD IN THESE MATTERS AS CONTAINED IN THE RESPONDENT'S STATEMENT OF DESIRE DATED NOVEMBER 17TH, 1966 IN THESE MATTERS AND ALSO TO HEAR REPRESENTATIONS OF THE PARTIES TO DETERMINE WHETHER THE RESPONDENT EMPLOYS STATIONARY ENGINEERS IN ITS "BOILER ROOM" AT CHATHAM.
2. DURING THE HEARING HELD ON DECEMBER 15TH, 1966 AT CHATHAM THE BOARD HAD AN OPPORTUNITY TO VIEW THE RESPONDENT'S PREMISES IN THE PRESENCE OF THE PARTIES IN ORDER THAT IT BE ABLE TO BETTER UNDERSTAND THE NATURE OF THE WORK PERFORMED BY PERSONS WHO ARE CLASSIFIED BY THE RESPONDENT AS ENGINEER COOKER OPERATORS AND WHO ARE CLAIMED BY THE CANADIAN UNION OF OPERATING ENGINEERS TO FORM AN APPROPRIATE BARGAINING UNIT.
3. THE EVIDENCE AT THE BOARD'S HEARING WAS PRIMARILY DIRECTED TOWARDS THE CHARGES MADE BY THE RESPONDENT THAT THE EMPLOYEES WERE MISLED BY THE INTERNATIONAL CHEMICAL WORKERS UNION INTO BELIEVING THAT ONE UNION WOULD REPRESENT ALL THE EMPLOYEES AT THE PLANT.
4. THE PARTIES DIRECTED ARGUMENT AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT SOUGHT BY THE CANADIAN UNION OF OPERATING ENGINEERS AND BASED THEIR ARGUMENT ON THE EVIDENCE OBTAINED BY THE BOARD WITH THE CONSENT, AND IN THE PRESENCE OF THE PARTIES, AT THE RESPONDENT'S PREMISES. THE PERSONS CLASSIFIED BY THE RESPONDENT AS ENGINEER COOKER OPERATORS ARE EMPLOYED IN A ROOM WHICH CONTAINS BOILER HOUSE EQUIPMENT WHICH ONE WOULD NORMALLY EXPECT TO FIND, WHICH IN THIS CASE IS COMPRISED OF AUTOMATICALLY FIRED BOILERS. IN ADDITION THIS ROOM CONTAINS THE COOKERS USED IN THE RESPONDENT'S RENDERING PLANT. THE RESPONDENT'S ENGINEER COOKER OPERATORS SPEND THE VAST MAJORITY OF THEIR TIME PERFORMING FUNCTIONS RELATED TO THESE COOKERS. THE ENGINEER COOKER OPERATORS MUST INSPECT AND CONTROL THE OPERATION OF THE COOKERS BY MEANS OF GAUGES AND CHARTS LOCATED OUTSIDE THE BOILER ROOM. THE ENGINEER COOKER OPERATORS ARE ALSO RESPONSIBLE FOR THE EMPTYING OF THE COOKERS WHEN THE COOKING PROCESS HAS BEEN COMPLETED.
5. A STATEMENT OF THE DUTIES OF THE ENGINEER COOKER OPERATORS, (AS AGREED TO BY THE RESPONDENT AND THE INTERVENER IN 1961) ENTERED INTO EVIDENCE ON THE AGREEMENT OF THE PARTIES AS AN ACCURATE STATEMENT OF THE PRESENT DUTIES OF THE ENGINEER COOKER OPERATORS, READS AS FOLLOWS:

THE SHIFT ENGINEER COOKER OPERATOR SHALL BE RESPONSIBLE FOR THE OPERATION OF THE BOILERS AND IN ADDITION THERETO EMPTY THE COOKERS, EXPEDITE THE FLOW OF THE COOKED MATERIAL INTO THE SCREW CONVEYOR, REGULATE THE GREASE VALVES, CLOSE THE COOKER EMPTYING DOOR AND TURN STEAM ON THE COOKERS.

HE SHALL BE RESPONSIBLE FOR LOADING THE COOKERS ONLY WHEN THE CHIEF ENGINEER IS ON THE PREMISES. HE SHALL NOT BE RESPONSIBLE FOR THE WASHING OUT OF THE COOKERS NOR THE WASHING DOWN OF THE COOKER AREA AS DISTINGUISHED FROM THE BOILER AREA, EXCEPT IN VALID EMERGENCY. THE SHIFT ENGINEER COOKER OPERATOR UNDERTAKES TO PROVIDE PLANT PROTECTION DURING THE WEEK ENDS AND ANY OTHER PERIOD OF NON-PRODUCTION EXCEPT DURING A STRIKE AND THE COMPANY UNDERTAKES TO PROVIDE EMPLOYMENT TO THREE ENGINEER COOKER OPERATORS HOLDING 4TH CLASS PROVINCE OF ONTARIO ENGINEERS CERTIFICATES ON THE BASIS OF A MINIMUM OF 40 HOURS PER WEEK. IT IS FURTHER AGREED THAT SHOULD IT BECOME NECESSARY TO ASK THE SHIFT ENGINEER COOKER OPERATOR TO WORK IN EXCESS OF 4 HOURS OVERTIME FOLLOWING AN 8 HOUR SHIFT, HE SHALL NOT BE REQUIRED TO INCLUDE ANY DUTIES ASSOCIATED WITH THE COOKER OPERATIONS DURING SUCH OVERTIME.

6. NONE OF THE OPERATIONS INVOLVED IN THE COOKING PROCESS REQUIRES A PERSON TRAINED AS A STATIONARY ENGINEER. THE ENGINEER COOKER OPERATORS ARE ASSISTED IN THEIR WORK WITH RESPECT TO THE COOKERS BY A HELPER. WHEN VIEWING THE OPERATION AT THE RESPONDENT'S PLANT IT IS IMPOSSIBLE TO DISTINGUISH BETWEEN THE HELPER AND THE ENGINEER COOKER OPERATOR IN THEIR FUNCTIONS WITH RESPECT TO THE COOKERS EXCEPT THAT IT IS THE HELPER'S RESPONSIBILITY TO GO TO THE SECOND FLOOR ABOVE THE COOKERS IN ORDER TO OPERATE THE NECESSARY CONTROLS TO CAUSE THE COOKERS TO BE LOADED.

7. THE CANADIAN UNION OF OPERATING ENGINEERS ARE NOT CLAIMING THE HELPERS WHO ASSIST THE ENGINEER COOKER OPERATORS WITH THE COOKERS, AS PART OF THEIR USUAL BARGAINING UNIT.

8. WHILE THE ENGINEER COOKER OPERATORS ARE REQUIRED BY LEGISLATION TO BE STATIONARY ENGINEERS TO PERFORM THEIR FUNCTIONS WITH RESPECT TO THE BOILERS, ONLY A RELATIVELY SMALL PORTION OF THEIR TIME IS REQUIRED FOR THE PERFORMANCE OF THE USUAL DUTIES OF A STATIONARY ENGINEER. THE LARGE MAJORITY OF THEIR TIME IS REQUIRED IN THE PERFORMANCE OF THEIR WORK AS COOKER OPERATORS WHERE THEY WORK ALONGSIDE OF OTHER PERSONS IN THE PRODUCTION BARGAINING UNIT. THE ENGINEER COOKER OPERATORS PERFORM AN INTEGRAL AND SUBSTANTIAL PART OF THE PRODUCTION PROCESS. THEIR COMMUNITY OF INTEREST IS PRIMARILY WITH THE PRODUCTION WORKERS. THEY ARE NOT ISOLATED FROM THE PRODUCTION WORKERS IN THE BOILER ROOM IN THE USUAL SENSE BUT IN FACT ARE EMPLOYED ON THE PRODUCTION LINE.

9. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES AND TO OUR FINDINGS AS SET OUT ABOVE, THE BOARD FINDS THAT THE EMPLOYEES CLASSIFIED AS ENGINEER COOKER OPERATORS ARE NOT PRIMARILY ENGAGED AS STATIONARY ENGINEERS IN THE BOILER ROOM BUT ARE PRIMARILY ENGAGED AS COOKER OPERATORS ON THE RESPONDENT'S PRODUCTION LINE. ACCORDINGLY, THE BOARD FINDS THAT THE EMPLOYEES WHO CAST BALLOTS IN VOTING CONSTITUENCY #2 DEFINED IN THE BOARD'S DECISION OF OCTOBER 13TH, 1966 DO NOT IN THE CIRCUMSTANCES OF THIS CASE CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT

APPROPRIATE FOR COLLECTIVE BARGAINING. IN ARRIVING AT THIS CONCLUSION THE BOARD FINDS THAT THE ENGINEER COOKER OPERATORS ARE NOT PRIMARILY ENGAGED IN THE EXERCISE OF TECHNICAL SKILLS BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES. SINCE THEY ARE PRIMARILY ENGAGED IN AN INTEGRAL AND SUBSTANTIAL PART OF THE PRODUCTION PROCESS THE BOARD FURTHER FINDS THAT THEY DO NOT "COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS" AS REQUIRED BY SECTION 6(2) OF THE LABOUR RELATIONS ACT.

10. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS CHATHAM PLANT AND GALT AND LONDON STATIONS SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT PERSONS CLASSIFIED AS SHIFT ENGINEER COOKER OPERATORS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

12. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN VOTING CONSTITUENCY #1 DEFINED IN THE BOARD'S DECISION OF OCTOBER 13TH, 1966, MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF INTERNATIONAL CHEMICAL WORKERS UNION.

13. A CERTIFICATE WILL ISSUE TO THE INTERNATIONAL CHEMICAL WORKERS UNION.

14. IN VIEW OF THE RESULT IT WILL NOT BE NECESSARY FOR THE BOARD TO DEAL WITH THE CHARGES MADE BY THE RESPONDENT IN THESE MATTERS.

15. THE BOARD ACCORDINGLY DECLARES THAT THE REPRESENTATION VOTE HELD IN VOTING CONSTITUENCY #2 AS DESCRIBED IN THE BOARD'S DECISION OF OCTOBER 13TH, 1966 BE SET ASIDE.

16. THE APPLICATION OF CANADIAN UNION OF OPERATING ENGINEERS IS THEREFORE DISMISSED.

17. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTES TAKEN IN VOTING CONSTITUENCY #1 AND VOTING CONSTITUENCY #2 DESCRIBED IN THE BOARD'S ENDORSEMENT OF OCTOBER 13TH, 1966 IN THESE MATTERS FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

12319-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA (APPLICANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.



APPEARANCES AT THE HEARING: MARTIN LEVINSON AND G. DAVIS FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: JANUARY 18, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD, INTER ALIA, ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER. THE APPLICANT INITIALLY CHALLENGED THE RESPONDENT'S PROPOSED EXCLUSION OF SIX PERSONS FROM THE LIST FILED BY THE RESPONDENT. THE RESPONDENT INITIALLY TOOK THE POSITION THAT THE SIX PERSONS WERE FOREMEN OR FORELADIES AND ACCORDINGLY WERE EXCLUDED FROM THE DESCRIPTION OF THE BARGAINING UNIT AGREED TO BY THE PARTIES.

2. DURING THE COURSE OF THE EXAMINER'S INQUIRY THE APPLICANT, BY REASONS BEST KNOWN TO ITSELF, DECIDED TO WITHDRAW ITS CHALLENGE TO THE RESPONDENT'S LIST WITH RESPECT TO THE SIX PERSONS IN DISPUTE. THE APPLICANT'S SOLICITOR WROTE TO THE BOARD ON NOVEMBER 2ND, 1966 AND ADVISED THE BOARD IN PART AS FOLLOWS: "I HAVE BEEN INSTRUCTED TO INFORM YOU ON BEHALF OF THE APPLICANT THAT IT WISHES TO ASSUME THE FOLLOWING POSITION, ... THAT IT IS NOW PREPARED TO AGREE WITH THE RESPONDENT THAT CERTAIN OTHER EMPLOYEES IN QUESTION SHOULD BE EXCLUDED FROM THE PROPOSED BARGAINING UNIT AND DOES NOT DESIRE TO CALL ANY EVIDENCE IN THAT REGARD." THE "CERTAIN OTHER EMPLOYEES IN QUESTION" ARE THE SIX PERSONS IN DISPUTE.

3. FOLLOWING RECEIPT OF THE APPLICANT'S LETTER OF NOVEMBER 2ND, 1966, THE RESPONDENT ALSO ALTERED ITS POSITION WITH RESPECT TO THE SIX PERSONS IN DISPUTE. THE RESPONDENT BY LETTER DATED NOVEMBER 17TH, 1966 STATED IN PART AS FOLLOWS: "...THERE ARE SIX EMPLOYEES DESIGNATED BY THE RESPONDENT AS FOREMEN WHOSE STATUS IS UNCERTAIN TO THE RESPONDENT. WHETHER THESE PERSONS SHOULD BE INCLUDED IN THE BARGAINING UNIT OR NOT IS A MATTER WHICH ONLY THE BOARD CAN DETERMINE AND I MUST ASK THAT EACH OF THESE PERSONS BE EXAMINED SO THAT THEIR STATUS MAY BE DETERMINED PERMANENTLY. THE NAMES OF THE SIX PERSONS ARE AS FOLLOWS: M. CASALE, L. DESIMONE, S. SPATOLA, F. MIRABILLI, R. GERALDI, M. FENYO."

4. THE BOARD ON NOVEMBER 23RD, 1966 ENDORSED THE RECORD IN THIS MATTER AS FOLLOWS:

HAVING REGARD TO THE LETTER FROM THE APPLICANT DATED NOVEMBER 2ND, 1966 AND THE LETTER FROM THE RESPONDENT DATED NOVEMBER 17TH, 1966 WITH RESPECT TO THE EXCLUSION FROM THE BARGAINING UNIT OF M. CASALE, L. DESIMONE, S. SPATOLA, F. MIRABILLI, R. GERALDI AND M. FENYO PERSONS CLASSIFIED BY THE RESPONDENT AS FOREMEN, THE BOARD DIRECTS THAT THE EXAMINER COMPLETE HIS INQUIRY AUTHORIZED BY THE BOARD IN ITS DECISION OF OCTOBER 26TH, 1966 IN THIS MATTER. SHOULD EITHER PARTY CHALLENGE THE EXCLUSION FROM THE BARGAINING UNIT OF SUCH FOREMEN THE BOARD FURTHER DIRECTS THAT THE EXAMINER INQUIRE

INTO THE DUTIES AND RESPONSIBILITIES OF ANY FOREMAN  
WHOSE EXCLUSION FROM THE BARGAINING UNIT IS CHALLENGED.

5. WHEN THE EXAMINER RECONVENED HIS MEETING THE RESPONDENT AGAIN ALTERED ITS POSITION AND SPECIFICALLY CHALLENGED THE EXCLUSION OF L. DESIMONE, M. FENYO AND S. SPATOLA ON THE BASIS THAT THEY WERE LEAD HANDS AND DO NOT EXERCISE SUFFICIENT MANAGERIAL FUNCTIONS TO WARRANT THEIR EXCLUSION FROM THE BARGAINING UNIT.

6. THE APPLICANT TOOK THE POSITION THAT THE RESPONDENT WAS ESTOPPED FROM CHANGING ITS POSITION AS REFERRED TO ABOVE SINCE THE APPLICANT BY ITS LETTER OF NOVEMBER 2ND, 1966 ADOPTED THE POSITION OF THE RESPONDENT AND THEREFORE THERE WAS NOTHING IN ISSUE AT THAT TIME.

7. THE BOARD DOES NOT PERMIT A PARTY TO UNILATERALLY REPUDIATE AN AGREEMENT IT HAS ENTERED INTO (SEE FONTHILL LUMBER LIMITED CASE 64 C.L.L.C. 1257, ¶16,305). IN THE FONTHILL LUMBER CASE THE PARTIES HAD SIGNED A WRITTEN AGREEMENT WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT WHICH ONE OF THE PARTIES SUBSEQUENTLY SOUGHT TO REPUDIATE. IN THE INSTANT CASE, THERE WAS NOTHING FROM WHICH THE BOARD COULD FIND THAT THE PARTIES HAD REACHED AN AGREEMENT WITH RESPECT TO THE PERSONS IN DISPUTE. WHILE THE APPLICANT SOUGHT TO AGREE TO WHAT IT UNDERSTOOD THE RESPONDENT'S POSITION TO BE, IT WAS READILY APPARENT AT THE TIME OF THE BOARD'S DECISION OF NOVEMBER 23RD, 1966, THAT THE PARTIES WERE NOT OF ONE MIND WITH RESPECT TO THE POSITION OF THE SIX PERSONS IN DISPUTE. BOTH THE APPLICANT AND THE RESPONDENT, FOR REASONS BEST KNOWN TO THEMSELVES, HAVE ALTERED THEIR POSITIONS. SINCE THE FACTS OF THIS CASE ARE READILY DISTINGUISHABLE FROM THE FACTS OF THE FONTHILL LUMBER CASE, THE BOARD FINDS THAT THERE WAS NO AGREEMENT IN EFFECT BETWEEN THE PARTIES WITH RESPECT TO THE SIX PERSONS IN DISPUTE.

8. THE BOARD DIRECTS THAT THE EXAMINER INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF M. CASALE, L. DESIMONE, S. SPATOLA, F. MIRABILLI, R. GERALDI AND M. FENYO PERSONS CLASSIFIED BY THE RESPONDENT AS FOREMEN, UNLESS THE PARTIES SPECIFICALLY AGREE TO THE INCLUSION OF ANY OF THE SIX PERSONS.

12350-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. ATOM-OTIVE PRODUCTS (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: PAT GRASSO, THOMAS ROBINSON, EARL J. CALANDRO, ROD BARRETT AND IAN SCOTT FOR THE APPLICANT, AND B. W. BINNING, M. P. RUBINOFF AND JOHN P. SANDERSON FOR THE RESPONDENT.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD  
MEMBER E. BOYER: JANUARY 31, 1967.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THIS IS AN APPLICATION FOR CERTIFICATION. IN CONDUCTING ITS EXAMINATION OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT, IT APPEARED THAT THE SIGNATURE UPON AN APPLICATION CARD, FILED AS EVIDENCE OF MEMBERSHIP OF GEORGE BRAZOWSKI, DID NOT CORRESPOND WITH THE SPECIMEN SIGNATURE FOR THAT EMPLOYEE FILED IN ACCORDANCE WITH THE BOARD'S DIRECTION BY THE RESPONDENT. AFTER THE MAKING OF THE BOARD'S USUAL INQUIRY, THE MATTER WAS LISTED FOR HEARING. THE EVIDENCE PRESENTED AT THE HEARING OF THIS MATTER ESTABLISHES THAT TWO EMPLOYEES DID NOT, IN FACT, PERSONALLY SIGN THE APPLICATIONS FOR MEMBERSHIP, WHICH WERE FILED WITH RESPECT TO THEM BY THE APPLICANT. THE CIRCUMSTANCES SURROUNDING THE SIGNING OF THOSE CARDS ARE AS FOLLOWS: MR. BRAZOWSKI, AN EMPLOYEE OF THE RESPONDENT, WAS APPROACHED BY LLOYD WALSH, ANOTHER EMPLOYEE, WHO WAS THE PRIME MOVER OF THE APPLICANT'S ORGANIZING CAMPAIGN. MR. BRAZOWSKI HESITATED, AND MR. WALSH INTENDING TO RETURN LATER LEFT TWO BLANK APPLICATIONS FOR MEMBERSHIP WITH MR. BRAZOWSKI. SHORTLY THEREAFTER, BRAZOWSKI SPOKE TO EDWARD MARTIN, A FELLOW WORKER, INDICATING HIS OWN INTENTION TO JOIN THE APPLICANT UNION. MARTIN, LIKEWISE, AGREED TO JOIN AND REQUESTED BRAZOWSKI TO HAVE WALSH SIGN THE CARD ON HIS BEHALF. HE FURTHER REQUESTED BRAZOWSKI TO PAY \$1.00 TO WALSH ON HIS BEHALF, INDICATING THAT HE WOULD REIMBURSE BRAZOWSKI LATER, AS HE IN FACT DID. BRAZOWSKI THEN WROTE HIS OWN NAME AND ADDRESS AND THOSE OF MR. MARTIN ON A BLANK CARD. WHEN WALSH RETURNED, BRAZOWSKI TOLD HIM THAT HE WAS TOO BUSY TO SIGN THE CARD HIMSELF AND REQUESTED HIM TO SIGN A CARD FOR HIM AS WELL AS ONE FOR MARTIN. BRAZOWSKI THEN RETURNED THE BLANK MEMBERSHIP CARDS TO WALSH, HANDED HIM THE CARD BEARING HIS NAME AND ADDRESS AND THOSE OF MARTIN AND GAVE HIM \$2.00. WALSH LATER WROTE OUT THE NAMES OF BRAZOWSKI AND MARTIN ON THE APPLICATION CARDS WHICH WERE SUBMITTED TO THE BOARD AS EVIDENCE OF THEIR MEMBERSHIP. NO DISCLOSURE WAS MADE BY WALSH TO THE UNION OFFICIALS WHO PROCESSED THE APPLICATION FOR CERTIFICATION.

4. COUNSEL FOR THE RESPONDENT SUBMITS THAT IN THESE CIRCUMSTANCES THE APPLICATION SHOULD BE DISMISSED. HE RELIED ON THE SLOUGH ESTATES (CANADA) LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 173. IN THAT CASE \$1.00 WAS TAKEN FROM AN EMPLOYEE'S PAY ENVELOPE AND HIS NAME WRITTEN ON AN APPLICATION CARD WITHOUT HIS KNOWLEDGE, AND WITHOUT PRIOR CONSULTATION WITH HIM. THIS CONDUCT WAS SUBSEQUENTLY RATIFIED BY THE EMPLOYEE IN QUESTION, ALTHOUGH THIS WAS NOT DONE UNTIL AFTER THE MEMBERSHIP APPLICATION HAD BEEN SUBMITTED AS EVIDENCE TO THE BOARD. THE BOARD DISMISSED THE APPLICATION, STATING AS FOLLOWS:

WE CAN ONLY CONCLUDE FROM THE EVIDENCE THAT IN SIGNING VANDUSEN'S NAME ON A MEMBERSHIP CARD MARPLE MUST HAVE OR SHOULD HAVE REALIZED THAT HIS ACTIONS COULD ONLY HAVE THE EFFECT OF MISLEADING THE BOARD. IN OUR



OPINION, THE FACT THAT VANDUSEN SUBSEQUENTLY AFFIRMED THE SUBMITTING OF A MEMBERSHIP CARD ON HIS BEHALF AND RATIFIED THE PAYMENT OF THE ONE DOLLAR INITIATION FEE IN NO WAY EXONERATES MARPLE'S CONDUCT. WE WOULD POINT OUT THAT MARPLE SUBMITTED THE EVIDENCE OF MEMBERSHIP FOR VANDUSEN TO TAYLOR ON APRIL 15TH, PRIOR TO ANY CONFIRMATION BY VANDUSEN.

WE, OF COURSE, ARE NOT PREPARED TO GIVE ANY WEIGHT TO THE EVIDENCE OF MEMBERSHIP SUBMITTED FOR VANDUSEN. WHILE THERE IS NO EVIDENCE OF ANY OTHER IRREGULARITIES WITH REGARD TO THE MEMBERSHIP EVIDENCE THE BOARD IN PREVIOUS CASES HAS REFUSED TO ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP WHERE A SINGLE DEFECTIVE CARD HAS BEEN SUBMITTED TO THE KNOWLEDGE OF A RESPONSIBLE UNION OFFICIAL (SEE R.C.A. VICTOR COMPANY LIMITED CASE, CCH C.L.L.R. TRANSFER BINDER '49-'54, ¶17,067, C.L.S. 76-412). WHILE THE ONUS RELATING TO THE CONDUCT OF A RANK-AND-FILE EMPLOYEE GENERALLY IS NOT AS EXACTING AS THAT WHICH RESTS UPON A PAID UNION OFFICIAL, IN THE INSTANT CASE, IT MUST BE BORNE IN MIND THAT MARPLE WAS GIVEN FULL RESPONSIBILITY FOR THE ORGANIZING CAMPAIGN AND THE SIGNING UP OF EMPLOYEES IN THE UNION. WE WOULD MENTION ALSO THAT MARPLE SIGNED AS COLLECTOR ON EVERY MEMBERSHIP CARD (SEE DOMINION STORES LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 447). WE WOULD ADD THAT IF TAYLOR DID GIVE CLEAR INSTRUCTIONS TO MARPLE AS TO THE PROPER MANNER IN WHICH TO SECURE EVIDENCE OF MEMBERSHIP WHICH SATISFIES THE BOARD'S REQUIREMENTS, IT IS APPARENT THAT MARPLE ACTED CONTRARY TO THOSE INSTRUCTIONS. IF ON THE OTHER HAND MARPLE WAS NOT SO ADVISED, THE UNION IN GIVING MARPLE FULL RESPONSIBILITY FOR THE CONDUCT OF THE ORGANIZING CAMPAIGN MUST BEAR THE CONSEQUENCES. HAVING REGARD TO ALL THE CIRCUMSTANCES WE FIND THAT A DOUBT IS CAST ON ALL THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION. THE BOARD THEREFORE IS NOT PREPARED TO PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP FILED IN THIS APPLICATION.

5. IN THE INSTANT CASE MOST OF THE ORGANIZING ACTIVITY WAS CARRIED ON BY WALSH, WHO TOOK INSTRUCTIONS FROM PAT GRASSO AND ROD BARRETT, BOTH OFFICIALS OF THE APPLICANT TRADE UNION. WHEN THE CAMPAIGN WAS COMPLETED WALSH WENT OVER EACH OF THE CARDS WITH BARRETT, BUT MADE NO DISCLOSURE TO HIM OF THE CIRCUMSTANCES RELATING TO THE CARDS FILED ON BEHALF OF BRAZOWSKI AND MARTIN. FROM THE EVIDENCE, IT WOULD APPEAR THAT IN ALL OTHER CASES THE MEMBERSHIP CARDS BORE ORIGINAL SIGNATURES. IN THE INSTANT CASE, OF COURSE, BOTH BRAZOWSKI AND MARTIN AUTHORIZED IN ADVANCE THE SIGNING OF THE APPLICATIONS AND PAID \$1.00 IN RESPECT OF THE APPLICATIONS.

6. IN THE TILLSONBURG SHOE Co. CASE, O.L.R.B. MONTHLY REPORT, JUNE 1964, P. 142, THE BOARD DEALT WITH A CASE WHERE NO MONEY HAD BEEN PAID BY A PERSON FOR WHOM AN APPLICATION CARD WAS SUBMITTED BY A TRADE UNION APPLYING FOR CERTIFICATION, THE PERSON WHO SIGNED THE CARD HAD BEEN "LENT" \$1.00 BY A VOLUNTARY ORGANIZER, BUT THE MONEY HAD NOT BEEN REPAID. THE INCIDENT WAS FOUND TO HAVE BEEN AN ISOLATED ONE. THE BOARD'S DECISION READS IN PART AS FOLLOWS:-

BECAUSE OF THE MANNER IN WHICH MEMBERSHIP EVIDENCE IS SUBMITTED AND VERIFIED BY AN APPLICANT TRADE UNION, THE BOARD IS COMPELLED TO RELY VERY EXTENSIVELY ON THE GOOD FAITH AND VERACITY OF THE STATEMENTS CONTAINED IN THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS - FORM 9. ACCORDINGLY, THE BOARD VIEWS ANY EVIDENCE OF NON-PAY AS AN EXTREMELY SERIOUS MATTER, NOT ONLY WITH RESPECT TO THE CARD IN QUESTION BUT ALSO WITH RESPECT TO ALL THE EVIDENCE OF MEMBERSHIP. HOWEVER, WHILE THE MANNER IN WHICH MRS. MOLNAR'S MEMBERSHIP CARD WAS SIGNED MAY BE CHARACTERIZED AS CARELESS, HAVING REGARD TO ALL THE EVIDENCE, WE ARE NOT PREPARED TO FIND THAT MR. DE PREZ DELIBERATELY SET OUT TO MISLEAD THE BOARD OR THAT HIS ACTIONS WERE ENCOURAGED OR CONDONED BY THE APPLICANT UNION. HIS CONDUCT WAS IN FACT CONTRARY TO THE EXPRESSED INSTRUCTIONS GIVEN BY THE UNION OFFICIALS.

WE FURTHER FIND THAT THE UNION OFFICIAL WHO COMPLETED FORM 9, MADE THE DECLARATION IN GOOD FAITH. THERE IS NO EVIDENCE THAT HE HAD KNOWLEDGE OR SHOULD HAVE HAD KNOWLEDGE OF THE LOAN TO MRS. MOLNAR. THERE IS ALSO NO EVIDENCE TO JUSTIFY A FINDING BY THE BOARD THAT THE UNION OFFICIAL FAILED TO MAKE THE INQUIRIES REQUIRED OF HIM BEFORE COMPLETING THE DECLARATION OR THAT HE FAILED TO MAKE FULL DISCLOSURE IN HIS DECLARATION.

IN THESE CIRCUMSTANCES, WHILE THE APPLICANT'S MEMBERSHIP POSITION IS REDUCED BY ONE CARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

7. IN THE CIRCUMSTANCES OF THE INSTANT CASE, THE BOARD WILL NOT GIVE WEIGHT TO THE CARDS FILED WITH RESPECT TO BRAZOWSKI AND MARTIN. IF IT WERE OUR CONCLUSION THAT THE DECLARATION MADE IN FORM 8, FILED IN SUPPORT OF THE MEMBERSHIP EVIDENCE, WAS NOT MADE IN GOOD FAITH THEN WE WOULD, AS HAS BEEN THE BOARD'S PRACTICE IN SUCH CASES, DISMISS THE APPLICATION. WE DO NOT, HOWEVER, REACH THAT CONCLUSION IN THE CIRCUMSTANCES OF THIS CASE. IN OUR VIEW, THESE ARE CIRCUMSTANCES IN WHICH THE

WISHES OF THE EMPLOYEES OF THE RESPONDENT OUGHT TO BE DETERMINED BY MEANS OF A REPRESENTATION VOTE.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGE FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: JANUARY 31, 1967.

I DISSENT. I WOULD HAVE DISMISSED THE APPLICATION. IT HAS BEEN SAID BY THIS BOARD BEFORE, AND BEARS REPEATING, THAT IN ANY APPLICATION FOR CERTIFICATION BEFORE IT, THE BOARD MUST RELY HEAVILY ON DOCUMENTARY EVIDENCE, AND ANY FACTS WHICH IN THE BOARD'S MIND, ESTABLISH DOUBT ABOUT THE PROPRIETY OF PROCEDURES ADOPTED BY AN APPLICANT IN OBTAINING DOCUMENTARY EVIDENCE MUST LOGICALLY WEIGH HEAVILY AGAINST THE APPLICANT.

APPLICANTS APPEARING BEFORE THIS BOARD IN CERTIFICATION PROCEEDINGS ARE GIVEN GREAT LATITUDE, FROM AN EVIDENTIARY STANDPOINT, IN THE PROOF NEEDED TO SATISFY THIS BOARD OF THEIR MEMBERSHIP STATUS. IF THEY BREACH THE TRUST THAT THIS BOARD HAS SEEN FIT TO PUT IN THEM, EITHER THROUGH DECEIT OR THROUGH CARELESSNESS, I AM OF THE OPINION THAT THEIR APPLICATION SHOULD BE DISMISSED. THE ONUS SHOULD NOT BE UPON THE BOARD AND ITS CLERKS TO SEE WHEREIN AN APPLICANT ERRS; THE ONUS SHOULD BE UPON THE APPLICANT TO SEE THAT IT DOES NOT ERR.

IN THE INSTANT CASE, THE APPLICANT SAW FIT TO DELEGATE TO ONE, WALSH, ALMOST THE COMPLETE RESPONSIBILITY FOR THE OBTAINING OF MEMBERS TO THE UNION, AND ENTRUSTED IN HIM THE AUTHORITY FOR HAVING THE REQUISITE DOCUMENTS FOR MEMBERSHIP COMPLETED. THE POSITION WHICH THE APPLICANT NOW TAKES IS THAT WALSH WAS A RANK AMATEUR AND THAT HIS IMPROPRIETIES IN THE TAKING OF CERTAIN MEMBERSHIP DOCUMENTS WERE ALL DONE WITHOUT THE KNOWLEDGE OF THE UNION. WITH THIS POSITION I AM UNABLE TO AGREE. IN MY OPINION, WALSH WAS CLEARLY THE AGENT OF THE UNION ACTING WITHIN THE SCOPE OF THE AUTHORITY GIVEN BY THE UNION, AND HIS ACTS IN THESE CIRCUMSTANCES ARE THE ACTS OF THE UNION. IF THE APPLICANT CHOSE TO RELY UPON THE SERVICES OF AN AMATEUR, I WOULD FIND THAT IT DOES SO AT ITS PERIL AND IT MUST BEAR THE COMPLETE CONSEQUENCES.

I WOULD SUGGEST THAT IT IS NOT SUFFICIENT FOR THE UNION TO SAY THAT IT DID NOT KNOW THE MATERIAL SET OUT ON VARIOUS MEMBERSHIP CARDS WAS INCORRECT; IT MUST SHOW ALSO THAT ITS ACTION IN SUBMITTING SUCH MATERIAL TO THE BOARD WAS NOT DONE IN A RECKLESS MANNER, NOT CARING WHETHER IT WAS TRUE OR FALSE.

IT IS TRUE THAT THERE WAS EVIDENCE BEFORE THE BOARD THAT MEMBERSHIP CARDS WERE BROUGHT BY WALSH TO ONE, BARRETT, A PAID UNION OFFICIAL, AND THAT ON HIS INSTRUCTIONS, WALSH WAS SENT OUT AGAIN TO ATTEMPT TO ADJUST SOME OF THE INADEQUACIES IN THE MEMBERSHIP DOCUMENTS. HOWEVER, IF WALSH MERELY ACTED IN IGNORANCE, AS COUNSEL FOR THE APPLICANT URGES US TO FIND, SURELY BARRETT COULD HAVE, AND SHOULD HAVE, MADE SUCH INQUIRIES OF WALSH AS WOULD HAVE RESULTED IN ALL OF THE MATERIAL BEING CORRECT IN THE APPLICATION BEFORE THIS BOARD.

IT IS ALSO NOT WITHOUT INTEREST THAT ALTHOUGH EVIDENCE WAS GIVEN BEFORE THE BOARD AS TO CERTAIN INQUIRIES MADE BY BARRETT OF WALSH AS TO MEMBERSHIP DOCUMENTS, THERE WAS NO EVIDENCE OF ANY INQUIRES MADE BY EITHER GRASSO OR CALANDRO, THE ONLY UNION OFFICIALS WHO COMPLETED THE FORM 8 DECLARATIONS ON THE APPLICATION. WHILE THIS MATTER WAS DIRECTLY IN ISSUE BEFORE THIS BOARD AT ITS INVESTIGATION, AND WHILE AT LEAST ONE OF THESE GENTLEMEN WAS PRESENT DURING THE BOARD'S INVESTIGATION, COUNSEL FOR THE APPLICANT DID NOT SEE FIT TO CALL EVIDENCE FROM EITHER GRASSO OR CALANDRO.

A RECITAL OF THE EVIDENCE HAS BEEN SET OUT IN PARAGRAPH 3 OF THE MAJORITY DECISION. WHILE IT IS NOT MY INTENTION TO REPEAT SUCH EVIDENCE, I WOULD MAKE CERTAIN OBSERVATIONS AND ADDITIONS THERETO.

THE APPLICATION AND RECEIPT CARD USED BY THE APPLICANT IN THIS CASE PROVIDED FOR THE SIGNATURE OF A MEMBER TO BE PLACED ON BOTH THE FRONT AND THE BACK OF SUCH CARD. I WOULD SUGGEST THAT THE BOARD'S INQUIRY WAS DIRECTED BECAUSE THE SIGNATURE ON ONE SIDE OF THE CARD DID NOT APPEAR TO BE THE SIGNATURE OF ONE, GEORGE BRAZOWSKI, IN THAT AN ERROR IN SPELLING HAD BEEN MADE. ON THE OTHER SIDE OF THE CARD, HOWEVER, I AM OF THE OPINION THAT A CONSCIOUS ATTEMPT WAS MADE BY WALSH TO COPY THE SIGNATURE OF BRAZOWSKI WHICH AMOUNTED TO AN ATTEMPT TO MISLEAD THIS BOARD. IT WAS NOTED IN EVIDENCE THAT BRAZOWSKI HAD WRITTEN HIS NAME AND ADDRESS ON A BLANK PIECE OF CARDBOARD (TOGETHER WITH THOSE OF A FELLOW WORKER, MARTIN, ON THE REVERSE SIDE THEREOF) AND THAT THIS PIECE OF CARDBOARD WAS GIVEN TO WALSH. I HAVE CAREFULLY COMPARED THE SIGNATURE OF BRAZOWSKI ON SUCH CARDBOARD WITH THE PURPORTED SIGNATURE ON THE APPLICATION CARD, AND I AM UNABLE TO DISTINGUISH ANY SIGNIFICANT DIFFERENCES IN SUCH SIGNATURES.

THE EVIDENCE BEFORE THE BOARD IS THAT INITIALLY BRAZOWSKI INTIMATED TO WALSH THAT HE DID NOT WISH TO JOIN THE UNION, ALTHOUGH HE SUBSEQUENTLY CHANGED HIS MIND AND INDEED HE ALSO INFORMED THE OTHER PERSON WHOSE APPLICATION WAS EXAMINED BY THE BOARD, ONE MARTIN, OF HIS INTENTIONS. THE EVIDENCE IS FURTHER, THAT FROM THE TIME OF HIS INITIAL



ENCOUNTER WITH WALSH, UNTIL SOMETIME LATER WHEN HE TURNED OVER TO WALSH THE BLANK PIECE OF CARDBOARD HEREINBEFORE REFERRED TO, HE HAD TWO BLANK UNION APPLICATION FORMS IN HIS POSSESSION.

I MUST SAY THAT I HAVE CONSIDERABLE DIFFICULTY IN COMPREHENDING THE EVIDENCE OF BRAZOWSKI THAT HE WAS TOO BUSY TO SIGN THE UNION APPLICATION CARD, WHEN HE DID IN FACT FIND TIME TO OBTAIN A PIECE OF CARDBOARD, DISCUSS THE MATTER WITH BOTH WALSH AND MARTIN, SIGN HIS OWN NAME AND ADDRESS AND THAT OF MARTIN TO THE BLANK PIECE OF CARDBOARD, AND RETURN THE PIECE OF CARDBOARD TO WALSH.

I NOW TURN TO THE EVIDENCE CONCERNING THE MEMBERSHIP OF MARTIN. IT SHOULD BE HERE MENTIONED THAT THERE WAS NO SUGGESTION OF IMPROPRIETY IN HIS MEMBERSHIP EVIDENCE UNTIL WALSH, WHILE GIVING EVIDENCE IN THE INVESTIGATION OF BRAZOWSKI'S MEMBERSHIP STATUS BY THE BOARD, DISCLOSED THAT HE (WALSH) HAD SIGNED THE MEMBERSHIP APPLICATION AND RECEIPT FORM FOR MARTIN AS WELL. WITH SUCH DISCLOSURE, THE BOARD CALLED UPON MARTIN TO GIVE EVIDENCE BEFORE IT.

ON THE RECEIPT PORTION OF THE MEMBERSHIP CARD OF THE UNION, IS A PLACE FOR THE SIGNATURE OF THE PAYOR OF THE MEMBERSHIP FEE AND IMMEDIATELY BELOW THIS IS A PLACE FOR THE SIGNATURE OF THE COLLECTOR. WHILE THE EVIDENCE OF WALSH IS THAT HE SIGNED MARTIN'S NAME AS PAYOR AND HIS OWN SIGNATURE AS COLLECTOR, I AM OF THE OPINION THAT NOBODY EXAMINING THE TWO PURPORTED SIGNATURES WOULD RATIONALLY COME TO THE CONCLUSION THAT THEY WERE IN FACT SIGNED BY THE SAME PERSON. I AM MINDFUL OF THE FACT THAT WALSH DID NOT HAVE THE SIGNATURE OF MARTIN FROM WHICH TO COPY, IF HE SO DESIRED. WHY THEN WOULD HE ATTEMPT TO WRITE "TED MARTIN" ON THE PAYOR PORTION OF THE CARD IN A DISSIMILAR WAY FROM HIS OWN SIGNATURE UNLESS IT WAS AN ATTEMPT ON HIS PART TO MISLEAD THIS BOARD?

I MUST ALSO MENTION THAT OTHER DISCREPANCIES WERE PRESENT BETWEEN THE ORIGINAL DOCUMENTARY EVIDENCE SUBMITTED ON THE APPLICATION FOR CERTIFICATION, AND THE VIVA VOCE EVIDENCE GIVEN BY WALSH, BRAZOWSKI AND MARTIN AS TO MEMBERSHIP PAYMENTS.

I MUST ACCORDINGLY CONCLUDE THAT THE MEMBERSHIP EVIDENCE COLLECTED BY WALSH AND SUBMITTED BY THE APPLICANT, IS SUFFICIENTLY SUSPECT THAT THE BOARD SHOULD PUT NO RELIANCE ON IT WHATSOEVER. THAT BEING SO, I WOULD HAVE DISMISSED THE APPLICATION.

12374-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. GEORGE ARMSTRONG CO. LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. MACLEAN AND W. SHERMAN FOR THE APPLICANT AND R. D. PERKINS FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 18, 1967.

1. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT TRADE UNION IS PROPOSING A BARGAINING UNIT CONSISTING OF CARPENTERS AND CARPENTERS' APPRENTICES, WHILE THE RESPONDENT COMPANY IS PROPOSING AN ALL EMPLOYEE UNIT. IT IS CLEAR THAT IF THE ALL EMPLOYEE UNIT WERE FOUND TO BE APPROPRIATE THE APPLICATION WOULD HAVE TO BE DISMISSED BECAUSE THE APPLICANT WOULD HAVE AS MEMBERS LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN SUCH UNIT.
2. IF THE APPROPRIATE UNIT IS FOUND TO BE ONE CONSISTING OF CARPENTERS AND CARPENTERS' APPRENTICES, IT IS THE APPLICANT'S SUBMISSION THAT ONLY TWO EMPLOYEES, JOHN LINTUNEN AND JOHN BLOM, WOULD BE INCLUDED IN SUCH UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. BOTH EMPLOYEES WERE ENGAGED IN CARPENTRY WORK AT OR ABOUT THE TIME THE APPLICATION WAS FILED. IT IS CLEAR, HOWEVER, THAT LINTUNEN AND BLOM ALSO DO WORK COMPLETELY DISSOCIATED FROM THE TRADE OF THE CARPENTER.
3. IN JOHNSON KIEWIT SUBWAY CORPORATION, O.L.R.B. MONTHLY REPORT, JUNE 1966, P. 182 THE BOARD SAID AT P. 183:

IN CONSTRUCTION INDUSTRY CASES IT HAS BEEN THE PRACTICE OF THE BOARD WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS (AND WHERE THEY ARE PAID ONLY ONE RATE) TO CHARACTERIZE THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS ON AN APPLICATION FOR CERTIFICATION. SEE, FOR EXAMPLE, O. J. GAFFNEY LIMITED, O.L.R.B. MONTHLY REPORT, AUGUST, 1964, P. 233; MCMAMARA CONSTRUCTION OF ONTARIO LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER, 1964, P. 419; NEDAN FORMING COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, MAY, 1965, P. 100.

IT IS CLEAR ON EXAMINING THESE AND OTHER CASES THAT WHEN THE BOARD SPEAKS OF "EMPLOYED FOR A MAJORITY OF THEIR TIME" REFERENCE IS BEING MADE NOT TO EMPLOYMENT ON THE DATE OF THE MAKING OF THE APPLICATION BUT, RATHER, TO A PERIOD OF TIME LEADING UP TO THE DATE OF THE APPLICATION. THE CASES HOWEVER DO NOT REFER TO ANY FIXED PERIOD SUCH AS TWO WEEKS OR A MONTH PRIOR TO THE APPLICATION. JUST HOW FAR BACK THE BOARD WILL GO DEPENDS ON THE PARTICULAR CIRCUMSTANCES OF THE INDIVIDUAL CASE.

4. APPLYING THESE PRINCIPLES TO THE FACTS OF THIS CASE, THE BURDEN IS ON THE APPLICANT TO SHOW THAT THE TWO EMPLOYEES IN QUESTION SPEND MORE THAN FIFTY PER CENT OF THEIR TIME DOING CARPENTRY WORK. ON THE BASIS OF

THE EVIDENCE BEFORE US, WE ARE NOT SATISFIED THAT LINTUNEN SPENDS THE MAJORITY OF HIS TIME AS A CARPENTER. APART FROM BLOM, THE SAME IS TRUE WITH RESPECT TO ANY OTHER EMPLOYEE WHO, IT MIGHT BE ARGUED, SHOULD BE INCLUDED IN A CARPENTERS' UNIT.

5. COUNSEL FOR THE APPLICANT URGED THE BOARD TO CONSIDER A SOMEWHAT DIFFERENT TEST THAN THAT SET OUT ABOVE. IN HIS SUBMISSION, IF THE PRIME REASON FOR HIRING AN EMPLOYEE IS BECAUSE HE HAS A PARTICULAR SKILL (IN THIS CASE CARPENTRY), AND IF THAT EMPLOYEE'S SKILL IS USED WHEN NEEDED BY THE EMPLOYER, THEN SUCH PERSON SHOULD BE CHARACTERIZED AS A CARPENTER EVEN THOUGH HE MAY SPEND LESS THAN FIFTY PER CENT OF HIS TIME DOING SUCH WORK.

6. EVEN IF WE WERE TO ADOPT THIS TEST (AND WE MAKE NO DECISION ON THIS ONE WAY OR THE OTHER) IT WOULD NOT ASSIST THE APPLICANT, AT ALL EVENTS IN THE CASE OF LINTUNEN. THERE IS NO SUGGESTION IN THE EVIDENCE THAT LINTUNEN WAS HIRED BECAUSE HE WAS A CARPENTER. IF THE EVIDENCE IS CAPABLE OF SUPPORTING ANY INFERENCE AS TO WHY HE WAS HIRED, IT WOULD HAVE TO BE THAT IT WAS BECAUSE LINTUNEN WAS A BLACKSMITH. IT IS CLEAR, THEN, THAT LINTUNEN WOULD NOT BE INCLUDED IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT.

7. THERE REMAINS ONLY BLOM. EVEN IF HE FALLS INTO THE PROPOSED CARPENTER BARGAINING UNIT, HE IS THE ONLY EMPLOYEE ON THE DATE OF THE MAKING OF THE APPLICATION IN THAT CATEGORY. HAVING REGARD TO THE PROVISIONS OF SUBSECTION 1 OF SECTION 6 OF THE LABOUR RELATIONS ACT AND TO ALL OF THE FOREGOING, THIS APPLICATION IS HEREBY DISMISSED.

12454-66-R: UNITED GARMENT WORKERS OF AMERICA LOCAL #253 (APPLICANT) v. PARIS SPORTSWEAR LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., AND MORITZ SUSSHOLZ FOR THE APPLICANT, W. S. COOK AND J. SEGAL FOR THE RESPONDENT, AND SAM GREENBAUM FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JANUARY 9, 1967.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, DESIGNERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT CONSISTS OF APPLICATIONS FOR MEMBERSHIP PROPERLY DATED AND SIGNED, TOGETHER WITH OFFICIAL RECEIPTS PROPERLY DATED AND INDICATING PAYMENT OF \$1.00 IN EACH CASE. THE RECEIPTS WERE NOT COUNTERSIGNED BY THE EMPLOYEES FROM WHOM THE MONEY WAS STATED TO HAVE BEEN RECEIVED. AT THE HEARING, THE BOARD HEARD VIVA VOCE EVIDENCE OF MR. MORITZ SUSSHOLZ, AN OFFICIAL OF THE APPLICANT, WHO TESTIFIED THAT HE COLLECTED THE MONEY FROM ALL BUT THREE OF THE PERSONS FOR WHOM EVIDENCE OF MEMBERSHIP WAS SUBMITTED. WHILE HE BELIEVED THE MONEY HAD BEEN COLLECTED FROM THE OTHER PERSONS FOR WHOM EVIDENCE WAS SUBMITTED, MR. SUSSHOLZ HAD NOT PERSONALLY COLLECTED IT, NOR DOES HIS NAME APPEAR AS COLLECTOR IN THOSE CASES. FOLLOWING THE HEARING, COUNSEL FOR THE RESPONDENT WROTE TO THE BOARD STATING THAT HE HAD BEEN ADVISED THAT CERTAIN EMPLOYEES HAD SIGNED UNION CARDS ON COMPANY PREMISES. COUNSEL SUBMITTED THAT THIS ALLEGATION WAS CONTRADICTORY TO THE SWORN TESTIMONY OF MR. SUSSHOLZ. THE PANEL OF THE BOARD WHO HEARD THIS MATTER, HAVING CONSULTED THEIR NOTES TAKEN AT THE HEARING, CAN FIND NOTHING THEREIN WHICH WOULD INDICATE ANY CONTRADICTION BETWEEN THE ALLEGATION MADE BY THE COUNSEL FOR THE RESPONDENT AND THE TESTIMONY HEARD AT THE HEARING. THE ALLEGATION THAT SOME OF THE MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT WERE SIGNED ON THE RESPONDENT'S PREMISES WOULD NOT, IF ESTABLISHED, AFFECT THE VALIDITY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED IN THIS MATTER, AND THE BOARD WOULD NOT, THEREFORE, HEAR EVIDENCE IN SUPPORT OF THE ALLEGATION.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11456-65-R: NURSES' ASSOCIATION BROCKVILLE GENERAL HOSPITAL (APPLICANT)  
V. BROCKVILLE GENERAL HOSPITAL (RESPONDENT).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. F. O. HERSEY, MRS. M. JOYCE BEATTY  
AND MRS. A. GRIBBEN FOR THE APPLICANT, AND F. G. HAMILTON,  
J. WILSON AND E. W. WRIGHT FOR THE RESPONDENT.

DECISION OF J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBER  
R. W. TEAGLE: JANUARY 23, 1967.

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2. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT HAS PROPOSED A BARGAINING UNIT CONSISTING OF ALL REGISTERED AND GRADUATE NURSES, BOTH FULL-TIME AND PART-TIME, EMPLOYED BY THE RESPONDENT. THE RESPONDENT HAS PROPOSED A UNIT CONSISTING OF ALL GRADUATE NURSING STAFF REGULARLY EMPLOYED IN THE NURSING UNITS, NURSERY, EMERGENCY DEPARTMENT, OPERATING ROOM, CENTRAL SERVICE AND DELIVERY ROOM, SAVE AND EXCEPT ASSISTANT HEAD NURSES AND PERSONS ABOVE THAT RANK AND DAILY-BASIS RELIEF NURSES.



3. MR. A. A. MORROW WAS APPOINTED AS EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON THE LIST CONTAINING THE NAMES OF EMPLOYEES OF THE RESPONDENT FILED WITH THE BOARD IN CONNECTION WITH THE APPLICATION.

4. IN THE COURSE OF THE INQUIRY BEFORE THE EXAMINER, THE PARTIES AGREED THAT THE FOLLOWING PERSONS, IN THE CLASSIFICATIONS SET OUT AFTER THEIR NAMES, BE EXCLUDED FROM THE BARGAINING UNIT:

MISS VERA PRESTON	- DIRECTOR OF NURSING
JOHN ROBERT LUSBY	- CHIEF LABORATORY TECHNICIAN
RUTH GRAHAM	- MEDICAL RECORDS LIBRARIAN
ELAINE MCCLINTOCK	- ASSISTANT DIRECTOR NURSING EDUCATION.

5. THE PARTIES ALSO AGREED THAT IN RESPECT OF EACH OF CERTAIN OCCUPATIONAL CLASSIFICATIONS, ONE PERSON BE EXAMINED AND THAT THE EVIDENCE OF THAT PERSON BE TAKEN TO APPLY TO ALL PERSONS IN THE CLASSIFICATION.

6. FOLLOWING THE FILING OF THE EXAMINER'S REPORT AND HIS SUPPLEMENTARY REPORT, A HEARING WAS HELD AT WHICH COUNSEL FOR THE PARTIES PRESENTED CERTAIN TESTIMONY CONCERNING THE ACCURACY OF THE REPORT AND MADE REPRESENTATIONS AS TO THE CONCLUSIONS AT WHICH THE BOARD SHOULD ARRIVE IN VIEW OF THE EVIDENCE.

7. AS WE POINTED OUT ABOVE (PARAGRAPH 2), THE APPLICANT PROPOSED A UNIT THAT WOULD INCLUDE BOTH FULL-TIME AND PART-TIME NURSES. THE RESPONDENT SOUGHT THE EXCLUSION FROM ANY BARGAINING UNIT THAT THE BOARD MIGHT DEEM APPROPRIATE OF DAILY-BASIS RELIEF NURSES, I.E. A CLASS OF NURSES WHOSE NAMES APPEAR ON A ROSTER OF NURSES AVAILABLE FOR INTERMITTENT DUTY AT THE RESPONDENT'S HOSPITAL AS WELL AS AT OTHER HOSPITALS AND INSTITUTIONS IN THE AREA AND WHO ARE CALLED UPON FROM TIME TO TIME. IN THE MAIN, THEY ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. IF WE WERE TO HOLD THAT THEY OUGHT TO BE EXCLUDED COMPLETELY FROM ANY BARGAINING UNIT THAT THE BOARD MIGHT DEEM APPROPRIATE, IT IS OBVIOUS THAT THEY WOULD BE DENIED ALL RIGHTS TO COLLECTIVE BARGAINING UNDER THE ACT. THEREFORE, WE CAN SEE NO JUSTIFICATION FOR NOT ADHERING TO OUR USUAL POLICY IN SUCH CIRCUMSTANCES OF SETTING UP TWO SEPARATE UNITS, ONE CONSISTING OF FULL-TIME PERSONNEL AND ONE CONSISTING OF PART-TIME PERSONNEL, WHERE SUCH A SEPARATION IS REQUESTED BY EITHER PARTY. IN ADDITION, WE CAN SEE NO REASON FOR DEPARTING FROM OUR USUAL POLICY AS TO THE TERMS IN WHICH PART-TIME UNITS ARE DESCRIBED, I.E., BY DRAWING THE DIVIDING LINE BETWEEN FULL-TIME AND PART-TIME UNITS AT THE 24 HOUR MARK.

8. THE APPLICANT SEEKS THE INCLUSION IN THE BARGAINING UNIT OF HERTHA MONTGOMERY, CLASSIFIED AS TECHNICAL ASSISTANT, LABORATORY, AND RUBY MURRAY, CLASSIFIED AS MEDICAL RECORDS LIBRARIAN. THE APPLICANT ALSO SEEKS THE INCLUSION IN THE BARGAINING UNIT OF DORIS P. MOORE AND MERYL SMITH WHO ARE DAILY-BASIS NURSES BUT WHO ALSO WORK PART-TIME IN THE PHARMACY AT THE HOSPITAL.

AS TO THE LATTER TWO, THERE IS NO QUESTION BUT THAT, WHEN THEY ARE EMPLOYED AS DAILY-BASIS RELIEF NURSES, THEY MUST BE TREATED IN THE SAME WAY AS OTHER DAILY-BASIS RELIEF NURSES, I.E., THEY WILL BE INCLUDED IN THE PART-TIME BARGAINING UNIT. THE ISSUE AT THIS POINT IS WITH RESPECT TO THE APPLICANT'S CLAIM THAT THEY SHOULD BE INCLUDED IN A UNIT OF NURSES DURING THE TIME WHEN THEY ARE EMPLOYED IN THE PHARMACY. THE BASIS OF THE APPLICANT'S CLAIM THAT THESE FOUR PERSONS BE INCLUDED IN THE NURSING UNIT MAY BE STATED SUCCINCTLY AS BEING THAT THEY ARE ALL REGISTERED NURSES, THAT THEIR NURSING TRAINING IS OF VALUE IN THE PERFORMANCE OF THE DUTIES WHICH THEY DISCHARGE IN THEIR PRESENT OCCUPATION AND THAT THEY MINISTER TO THE SICK AND THE INJURED. THE RESPONDENT CONTENTS THAT THEY ARE NOT ENGAGED IN NURSING DUTIES AND THAT THEY HAVE NO "OCCUPATIONAL COMMUNITY OF INTEREST" WITH THE NURSES. IN SO FAR AS THEIR MINISTERING TO THE SICK AND INJURED IS CONCERNED, WE FIND THAT THEY DO NOT DO SO IN ANY WAY THAT DISTINGUISHES THE SERVICES THEY RENDER FROM THE SERVICES THAT ARE RENDERED BY A GREAT MANY EMPLOYEES IN THE HOSPITAL WHO CANNOT BE DESCRIBED IN ANY SENSE AS PERFORMING "NURSING" DUTIES IN THE STRICT SENSE. WARD AIDS, ORDERLIES AND MANY OTHER PERSONS WOULD COME WITHIN THE GENERAL WORDS OF THE RESPONDENT HOSPITAL'S STATEMENT OF PERSONNEL POLICIES THAT "NURSING IS A PROFESSION WHICH EXISTS TO SERVE THE SICK AND INJURED ...". INDEED, ON A READING OF THIS STATEMENT IN ITS CONTEXT, IT IS OBVIOUS THAT THE RESPONDENT WAS FULLY AWARE OF THIS FACT AND, IN SETTING OUT ITS PERSONNEL POLICIES WITH REGARD TO GENERAL DUTY NURSING STAFF, IT QUALIFIED THE GENERAL WORDS BY DECLARING THAT "THE NURSE IS PREPARED TO ASSUME THOSE DUTIES WHICH ARE WITHIN THE SCOPE OF HER PREPARATION".

ON AN EXAMINATION OF THE EVIDENCE, WE FIND THAT MESDAMES MONTGOMERY, MURRAY, MOORE AND SMITH PERFORM DUTIES WHICH ARE IN ALL ESSENTIAL RESPECTS IDENTICAL WITH THOSE THAT ARE PERFORMED BY OTHER EMPLOYEES OF THE RESPONDENT WHO ARE NOT NURSES AND HAVE NO TRAINING AS NURSES AND WHOM THE APPLICANT IS NOT SEEKING TO INCLUDE IN THE BARGAINING UNIT IN THIS INSTANCE. THESE OTHER EMPLOYEES WOULD PROBABLY FORM PART OF A TECHNICAL UNIT IN A HOSPITAL WHICH MIGHT INCLUDE QUITE A NUMBER OF OTHER "TECHNICIANS" WHO ARE NOT NURSES. THE COMMUNITY OF INTEREST OF THE FOUR PERSONS HERE IN ISSUE LIES WITH THE "TECHNICIANS". HAD THE APPLICANT SOUGHT A BARGAINING UNIT INCLUDING "TECHNICIANS" AND HAD THE MEMBERSHIP PROVISION OF THE APPLICANT'S CONSTITUTION BEEN WIDE ENOUGH TO ALLOW FOR ADMISSION TO MEMBERSHIP OF SUCH "TECHNICIANS", ANOTHER RESULT MIGHT CONCEIVABLY HAVE FOLLOWED, ALTHOUGH WE ARE NOT CALLED UPON TO MAKE ANY DECISION ON THIS POINT IN THIS CASE. AS MATTERS STAND, WE FIND THAT MESDAMES MONTGOMERY, MURRAY, MOORE AND SMITH ARE NOT INCLUDED IN THE FULL-TIME BARGAINING UNIT THAT WILL BE DEFINED BELOW.

9. THE APPLICANT IS SEEKING THE INCLUSION IN THE BARGAINING UNIT OF PERSONS CLASSIFIED AS TEACHERS AND TEACHING ASSISTANTS IN THE NURSING SCHOOL AND IN THE NURSING ASSISTANT CENTRE CONDUCTED BY THE RESPONDENT ON THE GROUND THAT THE PERSONS INVOLVED ARE ALL NURSES AND THAT THERE IS A CLOSE INTER-RELATIONSHIP BETWEEN THE TEACHERS AND THE NURSES IN THE WARD.

RESPONDENT'S POSITION IS (i) THAT THE TEACHERS EXERCISE MANAGERIAL FUNCTIONS AND ARE THEREFORE NOT EMPLOYEES FOR THE PURPOSES OF THE LABOUR RELATIONS ACT, AND (ii) THAT THE TEACHERS LACK A COMMUNITY OF INTEREST WITH THE NURSES ENGAGED IN NURSING CARE.

AS TO THE FIRST HEAD OF THE RESPONDENT'S CONTENTION, THERE WAS SOME QUESTION AS TO WHETHER THE STUDENTS IN THE NURSING SCHOOL AND IN THE NURSING ASSISTANT CENTRE ARE EMPLOYEES OF THE RESPONDENT. HOWEVER, IN THE MAIN THE ARGUMENT PROCEEDED ON THE BASIS THAT THE RESULT AT WHICH THE BOARD SHOULD ARRIVE WOULD BE THE SAME NO MATTER WHETHER THEY WERE OR WERE NOT EMPLOYEES OF THE RESPONDENT. COUNSEL FOR THE RESPONDENT DREW ATTENTION TO THE AUTHORITY THAT THE TEACHERS EXERCISE IN SELECTING STUDENTS FOR ADMISSION TO THE SCHOOL AND THE CENTRE, IN TRAINING, SUPERVISING, DISCIPLINING AND EVALUATING THE PROGRESS OF THE STUDENTS, TO THEIR RESPONSIBILITY IN SETTING EXAMINATIONS AND ASSESSING THE CAPABILITIES OF STUDENTS AND THE FACT THAT IN PERFORMING ALL THESE FUNCTIONS THEY EXERCISE INDEPENDENT JUDGMENT AND DISCRETION. HE REFERRED TO THE BOARD'S DECISION IN THE GLOBE AND MAIL CASE, 63 C.L.L.C. 1197, C.L.S. 76-941, WHERE THE BOARD, IN ARRIVING AT THE CONCLUSION THAT DISTRICT MANAGERS IN THE CIRCULATION DEPARTMENT OF A NEWSPAPER EXERCISED MANAGERIAL FUNCTIONS, RELIED ON THEIR "RESPONSIBILITIES ... WITH RESPECT TO THE SELECTION, TRAINING AND SUPERVISION OF CARRIERS, WHETHER INDEPENDENT CONTRACTORS OR EMPLOYEES". IN OUR OPINION THE TERM "MANAGERIAL FUNCTIONS" HAS NOT BEEN USED TO DENOTE THE SORT OF FUNCTION THAT IS CARRIED OUT BY A TEACHER IN RELATION TO STUDENTS OR PUPILS IN A SCHOOL. IF THE POSITION OF THE RESPONDENT WERE SOUND, IT WOULD FOLLOW THAT ALL TEACHERS WHO INSTRUCT STUDENTS AND PUPILS IN SCHOOLS AND HAVE AUTHORITY TO DISCIPLINE, TEST AND GRADE THEM AND MAKE A DETERMINATION AS TO WHETHER THEY CAN CONTINUE WITH THEIR STUDIES OR NOT WOULD FALL WITHIN THE MANAGERIAL EXCLUSION IN SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT. IF THAT WERE THE CASE IT WOULD HAVE BEEN UNNECESSARY FOR THE LEGISLATURE TO DEAL, AS IT DID, WITH MEMBERS OF THE TEACHING PROFESSION IN SECTION 2 OF THE ACT. THE CLASSES OF PERSONS EXCLUDED BY CLAUSES A TO E OF SECTION 2 FROM THE OPERATION OF THE ACT ARE CLEARLY PERSONS WHO ARE EMPLOYEES. APPLYING THE EJUSDEM GENERIS RULE OF STATUTORY CONSTRUCTION, IT FOLLOWS THAT A TEACHER AS THAT TERM IS DEFINED IN THE TEACHING PROFESSION ACT WOULD BE AN EMPLOYEE FOR THE PURPOSES OF THE LABOUR RELATIONS ACT AND IT WAS NECESSARY TO EXCLUDE TEACHERS SPECIFICALLY BY A PROVISION OTHER THAN SECTION 1 (3) (B). THE DUTIES AND RESPONSIBILITIES OF THE TEACHERS IN THE HOSPITAL ARE FOR PRESENT PURPOSES IN ALL ESSENTIAL RESPECTS THE SAME AS TEACHERS TO WHOM THE TEACHING PROFESSION ACT APPLIES. WE THEREFORE FIND THAT THE TEACHERS HERE UNDER CONSIDERATION ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

IN SUPPORT OF THE SECOND HEAD OF HIS SUBMISSIONS, COUNSEL FOR THE RESPONDENT CONTENDED THAT THE TEACHING FUNCTION IN THE HOSPITAL IS SEPARATE AND APART FROM THE NURSING CARE THAT IS PROVIDED BY NURSES.

HE ALSO DREW ATTENTION TO A PROJECTED PLAN FOR THE ESTABLISHMENT OF REGIONAL NURSING SCHOOLS WHICH, WHEN IMPLEMENTED, WOULD PLACE NURSING EDUCATION IN EACH REGION UNDER A GOVERNING BODY SEPARATE AND DISTINCT FROM THE GOVERNING BODY OF ANY PARTICULAR HOSPITAL. IT IS OUR OPINION THAT THE TEACHING FUNCTION IN THIS HOSPITAL AT THE PRESENT TIME IS SO CLOSELY INTEGRATED WITH THE NURSING FUNCTION THAT NURSES WHO CARRY OUT THE TEACHING FUNCTION SHOULD BE INCLUDED IN THE SAME BARGAINING UNIT AS NURSES WHO CARRY OUT THE NURSING CARE FUNCTION. THE FACT THAT, AT SOME TIME IN THE FUTURE, THE TEACHERS AND TEACHING ASSISTANTS WHO NOW INSTRUCT IN THE NURSING SCHOOL AND IN THE NURSING ASSISTANT CENTRE MAY BECOME EMPLOYEES OF A REGIONAL NURSING SCHOOL RATHER THAN OF THE RESPONDENT HOSPITAL IS NOT A CONSIDERATION THAT WARRANTS THEIR EXCLUSION UNDER PRESENT CONDITIONS FROM A BARGAINING UNIT CONSISTING OF NURSES OF THE RESPONDENT HOSPITAL. IN ADDITION, WE ARE OF OPINION THAT, IF THEY ARE NOT INCLUDED IN A NURSING UNIT, THEY WOULD AT THE VERY LEAST CONSTITUTE A SEPARATE BARGAINING UNIT WHICH WOULD CONSIST OF THE TEACHERS AND THE TEACHING ASSISTANTS IN THE NURSING SCHOOL AND IN THE NURSING ASSISTANT CENTRE. WE CAN SEE NO JUSTIFICATION FOR SPLITTING THE EMPLOYEES OF THE NURSING PROFESSION INTO THREE, RATHER THAN TWO UNITS, ONE OF FULL-TIME AND ONE OF PART-TIME EMPLOYEES, AS WOULD BE THE CASE IF WE WERE TO ACCEPT THIS HEAD OF THE ARGUMENT OF COUNSEL FOR THE RESPONDENT HOSPITAL WITH REGARD TO THE TEACHERS.

10. THE RESPONDENT SEEKS THE EXCLUSION FROM ANY BARGAINING UNIT THAT THE BOARD MAY DEEM APPROPRIATE IN THIS CASE OF ASSISTANT HEAD NURSES, HEAD NURSES AND SUPERVISORS ON THE GROUND THAT ALL OF THEM EXERCISE MANAGERIAL FUNCTIONS. WE SHALL DEAL WITH THESE CLASSIFICATIONS SERIAM.

THE ASSISTANT HEAD NURSES CANNOT HIRE OR FIRE OR RECOMMEND THE HIRING OR FIRING OF AN EMPLOYEE; THEY CANNOT AND DO NOT REPRIMAND EMPLOYEES; THEY CANNOT GRANT TIME OFF. ALTHOUGH AS ASSISTANT HEAD NURSE REPLACES THE HEAD NURSE ON THE LATTER'S TWO DAYS OFF EACH WEEK AND WHEN THE HEAD NURSE IS ON HER ANNUAL VACATION LEAVE, THE REPORT OF THE EXAMINER READ AS A WHOLE INDICATES THAT THE DEGREE OF AUTHORITY EXERCISED BY THE ASSISTANT HEAD NURSE DURING THIS PERIOD IS LESS THAN THAT EXERCISED BY THE HEAD NURSE. APART FROM TWO ASPECTS OF THE DUTIES OF ASSISTANT HEAD NURSES THAT CAUSE US SOME CONCERN, THERE IS NOTHING OF A MANAGERIAL QUALITY ABOUT THEIR WORK. ONE OF THESE ASPECTS THAT COMES TO LIGHT IN THE TESTIMONY OF MRS. J. MACKENZIE, WHO WAS EXAMINED AS A REPRESENTATIVE OF THE CLASSIFICATION OF ASSISTANT HEAD NURSES, WAS THAT SHE ATTENDED SEVERAL MEETINGS WITH SENIOR MANAGEMENT WHERE WHAT APPEARS TO BE PERSONNEL MATTERS WERE DISCUSSED. WHEN WE DEAL WITH THE SUPERVISORY ASPECT OF MANAGEMENT FUNCTIONS, THE ELEMENT OF CONTROL OF EMPLOYEES IS OF PRIMARY SIGNIFICANCE. WHERE THERE IS SOME TANGIBLE EVIDENCE OF CONTROL, ATTENDANCE AT MEETINGS WITH MANAGEMENT MAY BE A WEIGHTY CONSIDERATION IN FAVOUR OF A FINDING THAT A PERSON EXERCISES MANAGERIAL FUNCTIONS. HOWEVER, AN OPPOSITE CONCLUSION IS INDICATED WHERE THE EVIDENCE OF CONTROL IS MINIMAL, AS IS THE CASE HERE, AND WHERE THE EVIDENCE OF WHAT OCCURRED IN SUCH MEETINGS CONSISTS IN ESSENCE OF A STATEMENT THAT CERTAIN TOPICS WERE "DISCUSSED" WITHOUT ANYTHING TO SHOW THAT THE DISCUSSION WAS TO SERVE A PURPOSE OTHER THAN TO CONVEY TO ONE



PARTICULAR GROUP INFORMATION THAT WAS ALREADY AVAILABLE TO EMPLOYEES IN GENERAL, ALTHOUGH PERHAPS IN GREATER DETAIL. THE OTHER ASPECT OF THE DUTIES OF ASSISTANT HEAD NURSES THAT CAUSES US CONCERN IS THAT MRS. MACKENZIE PREPARED AN EVALUATION OF PERFORMANCE FORM FOR A GENERAL DUTY NURSE ON ONE OCCASION IN THE ABSENCE OF THE HEAD NURSE. THIS APPEARS TO HAVE BEEN AN ISOLATED INSTANCE AND EVEN THEN IT WOULD APPEAR THAT SHE SOUGHT CONFIRMATION OF HER EVALUATION BY THE HEAD NURSE ON THE LATTER'S RETURN TO DUTY. VIEWING THE TESTIMONY OF MRS. MACKENZIE AS A WHOLE AND HAVING REGARD ALSO FOR THE TESTIMONY OF OTHER WITNESSES WITH RESPECT TO THE DUTIES OF ASSISTANT HEAD NURSES, WE FIND THAT THE ASSISTANT HEAD NURSES DO NOT EXERCISE MANAGERIAL FUNCTIONS. SEE FALCONBRIDGE NICKEL MINES LIMITED CASE. O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, AT P. 388. IT MAY NOT BE AMISS TO POINT OUT THAT, ASIDE FROM A GENERAL STATEMENT IN A MEMORANDUM SETTING OUT THE PERSONNEL POLICIES OF THE RESPONDENT'S DEPARTMENT OF NURSING TO THE EFFECT THAT AN ASSISTANT HEAD NURSE IS RESPONSIBLE FOR THE SUPERVISION OF THE STAFF AND FOR THE MANAGEMENT OF A UNIT OR WARD IN THE HOSPITAL, THERE WAS NO WRITTEN DOCUMENT OR FORMAL ORAL COMMUNICATION OUTLINING EITHER TO ASSISTANT HEAD NURSES OR TO THOSE UNDER THEIR DIRECTION THE RESPONSIBILITIES OF THE ASSISTANT HEAD NURSE. AS THE BOARD POINTED OUT IN THE RIVERVIEW HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 743.

WHERE THE BOARD IS CALLED UPON TO REACH A CONCLUSION AS TO THE STATUS OF PERSONS WHOM THE EMPLOYER CLASSIFIES AS MANAGERIAL (IN CASES IN WHICH THE TEST OF MANAGERIAL FUNCTIONS TURNS ON SUPERVISION) AND THOSE SUBJECT TO THEIR CONTROL, FAILURE OF THE EMPLOYER TO FORMALIZE THE RELATIONSHIP BETWEEN THESE PERSONS IS A FACTOR THAT MAY WEIGH HEAVILY AGAINST THE EMPLOYER'S CLAIM.

WHAT WE HAVE SAID ABOVE WITH RESPECT TO ASSISTANT HEAD NURSES GENERALLY IS APPLICABLE IN EVERY ESSENTIAL RESPECT TO MRS. HILARY HEATON, ASSISTANT HEAD NURSE IN THE RECOVERY ROOM, WHO WAS TREATED IN THE EXAMINATION AS A SPECIAL CASE. WE FIND THAT SHE DOES NOT EXERCISE MANAGEMENT FUNCTIONS.

HEAD NURSES HAVE NO GREATER AUTHORITY THAN ASSISTANT HEAD NURSES TO HIRE OR FIRE OR TO RECOMMEND THE HIRING OR FIRING OF EMPLOYEES. THEY DO NOT HAVE ANY AUTHORITY TO GRANT TIME OFF EXCEPT WITHIN VERY NARROW AND PREDETERMINED LIMITS. ON THE OTHER HAND, THEY DO HAVE CONSIDERABLE AUTHORITY, WHEN OCCASION REQUIRES IT, TO REPRIMAND AND THEY DO IN FACT REPRIMAND GENERAL DUTY NURSES AND ASSISTANT HEAD NURSES. THE TESTIMONY OF MRS. ANN TRUSSEL, WHO WAS EXAMINED AS A REPRESENTATIVE OF THE HEAD NURSES, APPEARS ON THE SURFACE TO IMPLY THAT HER AUTHORITY IN THIS REGARD IS VERY LIMITED. IT SHOULD BE NOTED, HOWEVER, THAT IN HER VIEW, TO "REPRIMAND" MEANS TO ADMINISTER A "SEVERE SCOLDING". IT IS ABUNDANTLY CLEAR FROM MRS. TRUSSEL'S EVIDENCE THAT SHE HAS IN FACT REPRIMAND EMPLOYEES, ALBEIT IN WHAT SHE DESCRIBED AS A "DIPLOMATIC MANNER", I.E., WHAT ONE WOULD EXPECT TO BE A MANNER BECOMING TO A NURSING INSTITUTION.

IN ADDITION, IT IS A REGULAR PART OF THE DUTIES OF A HEAD NURSE TO PREPARE PERIODICALLY AN EVALUATION OF EVERY ASSISTANT HEAD NURSE, GENERAL DUTY NURSE AND NURSING ASSISTANT UNDER HER DIRECTION. THE GRANTING OF MERIT INCREASES DEPENDS UPON WHETHER THIS EVALUATION IS FAVOURABLE OR UNFAVOURABLE. NOT ONLY DOES THE HEAD NURSE PREPARE THE EVALUATION BUT, ACCORDING TO MRS. TRUSSEL, SHE DISCUSSES THE EVALUATION WITH THE DIRECTOR OF NURSING. MRS. TRUSSEL SAID THAT SHE HAD BEEN ASKED TO RECOMMEND THE AMOUNT OF AN INCREASE THAT A NURSE SHOULD RECEIVE; SHE HAS ADVISED THE NURSES OF HER RECOMMENDATION AND THE AMOUNT THEY ARE TO RECEIVE AS A RESULT OF HER RECOMMENDATION. THE EXTENT OF HER CONTROL OVER WORK IN HER DEPARTMENT IS ALSO INDICATED BY THE FACT THAT SHE INTRODUCED, ON HER OWN INITIATIVE AND WITHOUT PRIOR CONSULTATION WITH THE DIRECTOR OF NURSING, THE TEAM CONCEPT OF NURSING. THIS STEP INVOLVED A CONSIDERABLE CHANGE IN THE METHOD OF OPERATION IN THE WARD WHERE SHE WAS IN CHARGE. IN SHORT, THE HEAD NURSE REGULARLY EXECUTES MANAGEMENT POLICY RELATING TO PERSONNEL MATTERS AND, IN DOING SO, EXERCISES A CONSIDERABLE DEGREE OF DISCRETION AND JUDGMENT. IT IS NOT WITHOUT SIGNIFICANCE THAT SHE DEVOTES MOST OF HER TIME TO ADMINISTRATIVE AND SUPERVISORY DUTIES RATHER THAN TO NURSING CARE.

THE SUPERVISORS, INCLUDING MRS. LOIS TEEPORTON, SUPERVISOR IN THE OPERATING ROOM, AND MRS. ANN COLE SUPERVISOR OF NURSING SERVICE AND INSERVICE EDUCATION, AS WELL AS MRS. MARGARET HARPER, CHIEF INSTRUCTOR IN THE NURSE'S AID COURSE, ALSO REGULARLY EXECUTE MANAGEMENT POLICY RELATING TO PERSONNEL MATTERS AND IT IS OUR FINDING THAT THEY EXERCISE MANAGERIAL FUNCTIONS. SUPERVISORS CANNOT HIRE OR FIRE BUT THEY CAN RECOMMEND THAT A PERSON BE HIRED OR FIRED. MRS. M. L. MORRIS, WHO WAS EXAMINED AS A REPRESENTATIVE OF THE SUPERVISORS, STATED THAT SHE RECOMMENDED THAT A PERSON BE HIRED TO FILL A POSITION AND THAT SHE HAS AUTHORITY TO RECOMMEND THAT AN EMPLOYEE BE REPLACED IF THE EMPLOYEE "DID NOT PERFORM THE JOB SATISFACTORILY". SHE ALSO INFORMED THE EXAMINER THAT, ALTHOUGH THE LIST OF AVAILABLE DAILY RELIEF NURSES, TO WHOM REFERENCE HAS BEEN MADE ABOVE, IS MADE UP BY THE NURSING OFFICE, A SUPERVISOR HAS COMPLETE DISCRETION, "ON THE BASIS OF HER OWN EXPERIENCE AND KNOWLEDGE", TO DETERMINE WHICH DAILY RELIEF NURSES ARE TO BE CALLED IN AND HOW OFTEN THEY ARE TO BE CALLED IN. A SUPERVISOR CAN AUTHORIZE THE ASSIGNMENT OF ADDITIONAL NURSES TO A WARD AT THE REQUEST OF A HEAD NURSE. SHE CAN SHIFT PERSONNEL FROM WARD TO WARD AND AUTHORIZE OVERTIME. IT IS PART OF HER REGULAR DUTY TO OBSERVE THE PERFORMANCE OF EMPLOYEES, TO "CORRECT" A NURSE ON PROCEDURE, AND TO REPORT ON THE PERFORMANCE OF EMPLOYEES TO THE DIRECTOR OF NURSING. SHE CAN INVESTIGATE COMPLAINTS BY PATIENTS AND, AS MRS. MORRIS SAID, "SOLVE THE PROBLEM" ON HER OWN INITIATIVE WITHOUT REFERENCE TO THE DIRECTOR OF NURSING. MRS. MORRIS INFORMED THE EXAMINER THAT SHE HAD MORE AUTHORITY THAN IS POSSESSED BY A HEAD NURSE.

THE DUTIES OF MRS. ANN COLE, SUPERVISOR OF NURSING SERVICE AND INSERVICE EDUCATION, INVOLVE EDUCATIONAL AND ADMINISTRATIVE AS WELL AS SUPERVISORY FUNCTIONS. HER SUPERVISORY FUNCTIONS INCLUDE THE INTERVIEWING OF PROSPECTIVE EMPLOYEES WITH A VIEW TO DETERMINING, AS MRS. COLE SAID, "IF A PERSON'S PERSONALITY AND TRAINING IS SUITABLE FOR THE POSITION AVAILABLE". SHE CAN AND HAS RECOMMENDED THAT CERTAIN PERSONS BE HIRED.

HER OPINION HAS BEEN SOUGHT BY THE DIRECTOR OF NURSING AS TO THE TRANSFER OR PROMOTION OF VARIOUS PEOPLE ON THE STAFF. IT IS A REGULAR PART OF HER DUTY TO REPORT AS TO WHETHER EMPLOYEES ARE DOING THEIR WORK PROPERLY AND SHE HAS TAKEN CORRECTIVE DISCIPLINARY MEASURES WITH RESPECT TO ORDERLIES. MRS. COLE STATED THAT SHE IS "PART OF THE GRIEVANCE PROCEDURE UNDER C.U.P.E. AGREEMENT" AND HAS "RECEIVED VERBAL GRIEVANCES".

MRS. MARGARET HARPER, THE CHIEF INSTRUCTOR IN THE NURSE'S AID COURSE IS THE NURSE IN CHARGE OF THE NURSING ASSISTANT CENTRE. SHE EVALUATES AND SUGGESTS CHANGES IN THE PROGRAM OF THE CENTRE AND IS RESPONSIBLE FOR "ASSIGNING ASSIGNMENTS" AND FOR SEEING THAT ALL SUBJECTS ARE PROPERLY TAUGHT. SHE HAS INTERVIEWED APPLICANTS FOR A POSITION IN THE NURSING ASSISTANT CENTRE AND HAS MADE RECOMMENDATIONS IN CONNECTION WITH THE APPOINTMENT OF STAFF. SHE REGULARLY PREPARES THE EVALUATION FORMS FOR THE NURSES AND THE SECRETARY WHO ARE UNDER HER DIRECTION AND DISCUSSES THEIR PERFORMANCE WITH THE DIRECTOR OF NURSING. INCREASES ARE GRANTED TO EMPLOYEES ON THE BASIS OF HER RECOMMENDATION.

FINALLY, WE COME TO THE QUESTION CONCERNING MRS. SHEILA BURTON, CLASSIFIED BY THE RESPONDENT AS HEALTH SUPERVISOR. THE REASON GIVEN BY THE RESPONDENT FOR CLAIMING THAT MRS. BURTON SHOULD BE EXCLUDED WAS THAT SHE IS A CLERICAL EMPLOYEE AND "HAS CONFIDENTIAL KNOWLEDGE PERTAINING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT". ON OUR READING OF THE REPORT OF THE EXAMINER, WE DO NOT FIND THAT SHE IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. SEE IN THIS CONNECTION THE FALCONBRIDGE NICKEL MINES LIMITED CASE, SUPRA. IN SO FAR AS THE CLAIM THAT SHE HAS CLERICAL DUTIES ARE CONCERNED, THERE IS NO DOUBT THAT SHE DOES A GOOD DEAL OF CLERICAL WORK. HOWEVER, IT IS CLERICAL WORK SOLELY RELATED TO THE HEALTH OF THE EMPLOYEES AND IS PART AND PARCEL OF A SERVICE THAT SHE RENDERS TO INSURE THE EMPLOYER THAT THE EMPLOYEES ARE IN GOOD HEALTH WHILE THEY ARE WORKING IN THE HOSPITAL. IF WE WERE DEALING HERE WITH AN INDUSTRIAL UNDERTAKING WE MIGHT INCLUDE HER IN AN OFFICE UNIT BECAUSE THERE PROBABLY WOULD BE NO MORE APPROPRIATE UNIT TO WHICH SHE COULD BE ASSIGNED. IN A HOSPITAL UNIT, SHE SHOULD BE ATTACHED TO A NURSING UNIT WHERE HER PROFESSIONAL INTEREST LIES.

11. HAVING REGARD TO THE CONCLUSIONS INDICATED ABOVE, THE BOARD FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT BROCKVILLE ENGAGED IN NURSING CARE AND IN TEACHING, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE AND THOSE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT VERA PRESTON, DIRECTOR OF NURSING, JOHN ROBERT LUSBY, CHIEF LABORATORY TECHNICIAN, RUTH GRAHAM, MEDICAL RECORDS LIBRARIAN, AND ELAINE MCCLINTOCK, ASSISTANT DIRECTOR OF NURSING EDUCATION, ARE EXCLUDED FROM THE UNIT. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT NURSES CLASSIFIED AS SUPERVISORS (INCLUDING LOIS TEEPORTON, SUPERVISOR OPERATING ROOM, ANN COLE,

SUPERVISOR IN-SERVICE EDUCATION, AND MARGARET HARPER, CHIEF INSTRUCTOR, NURSE'S AID COURSE) ARE EXCLUDED FROM THE BARGAINING UNIT. THE BOARD FURTHER DECLARES THAT HERTHA MONTGOMERY, TECHNICAL ASSISTANT, LABORATORY, RUBY MURRAY, MEDICAL RECORDS LIBRARIAN, DORIS P. MOORE AND MERYL SMITH, WHO WORK IN THE PHARMACY, ARE EXCLUDED FROM THE BARGAINING UNIT DEFINED ABOVE. THE BOARD FURTHER DECLARES THAT ASSISTANT HEAD NURSES (INCLUDING HILARY HEATON, ASSISTANT HEAD NURSE IN THE RECOVERY ROOM) AND SHEILA BURTON, HEALTH SUPERVISOR, ARE INCLUDED IN THE BARGAINING UNIT.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT, WHO WERE IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 11 AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THIS BARGAINING UNIT.

14. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT BROCKVILLE ENGAGED IN NURSING CARE AND REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE, CONSTITUTE A UNIT OF THE EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. IN ORDER TO ASCERTAIN THE NUMBER OF PERSONS IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 14 FOR THE PURPOSE OF ESTABLISHING THE MEMBERSHIP POSITION OF THE APPLICANT, THE BOARD FINDS THAT ALL REGISTERED AND GRADUATE NURSES WHO WORKED ON AT LEAST ONE DAY DURING THE TWO MONTH PERIOD ENDING ON FEBRUARY 28, 1966, SHOULD BE INCLUDED IN THE UNIT. IN THIS CONNECTION REFERENCE MAY BE HAD TO THE CANADIAN PACIFIC RAILWAY COMPANY, ROYAL YORK HOTEL CASE, O.L.R.B. MONTHLY REPORT, MAY 1960, P. 65.

THE BOARD IS SATISFIED, ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THAT MORE THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT, WHO WERE IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 14 AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. A REPRESENTATION VOTE WILL BE TAKEN OF ALL REGISTERED AND GRADUATE NURSES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH 14 WHO WORKED AT LEAST ONE DAY DURING THE PERIOD BETWEEN NOVEMBER 24, 1966, AND THE DATE OF THIS DIRECTION, BOTH DATES INCLUSIVE. ALL EMPLOYEES OF THE RESPONDENT IN THIS BARGAINING UNIT WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT. THE MATTER IS REFERRED TO THE REGISTRAR.

REASON FOR DECISION OF BOARD MEMBER D. B. ARCHER: JANUARY 23, 1967.

WHILE I AGREE IN THE MAIN WITH THE MAJORITY DECISION, I WOULD HAVE INCLUDED HEAD NURSES IN THE BARGAINING UNIT. THE BOARD HAS APPLIED THE



USUAL TESTS OF MANAGERIAL AUTHORITY AND THIS HAS RESULTED IN THE EXCLUSION OF HEAD NURSES FROM THE BARGAINING UNIT. I BELIEVE IN THE PROFESSIONAL BARGAINING FIELD NEW TESTS WILL HAVE TO BE DEVELOPED THAT WILL TAKE BARGAINING UNIT INCLUSION MUCH HIGHER INTO WHAT ARE COMMONLY CALLED MANAGEMENT AREAS. THE TERM OF NON-WORKING FOREMEN HAD TO BE USED IN BUILDING TRADES' CERTIFICATIONS, AGAINST THE NORMAL FOREMEN IN INDUSTRIAL UNITS AS THE CUT OFF POINT FOR BARGAINING UNIT MEMBERSHIP, IF THE BARGAINING UNIT WAS TO BE MEANINGFUL FOR COLLECTIVE BARGAINING. SO MUST HEAD NURSES, AS MEMBERS OF THE FRATERNITY OF TRAINED PROFESSIONAL NURSES, BE INCLUDED IN A NURSES' UNIT IF IT IS TO BE A VIABLE ENTITY AND THE COLLECTIVE BARGAINING PROCESS IS NOT TO BE RENDERED MEANINGLESS.

FOR THESE REASONS, I WOULD HAVE INCLUDED HEAD NURSES IN THE BARGAINING UNIT.

12483-66-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #3189 (APPLICANT) V. SHELVING DISPLAYS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: N. C. HILBORN FOR THE APPLICANT, P. A. BALLACHEY, Q.C., AND C. SHARRA FOR THE RESPONDENT, B. H. KELLOCK FOR THE OBJECTORS.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: JANUARY 17, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE LETTER OF THE APPLICANT DATED DECEMBER 22ND, 1966, WITHDRAWING ITS CHALLENGE WITH RESPECT TO THE EMPLOYMENT STATUS OF THOMAS BUDD, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THOMAS BUDD IS AN EMPLOYEE AND IS INCLUDED IN THE BARGAINING UNIT. THE APPOINTMENT OF W. G. JACKSON, EXAMINER, ACCORDINGLY IS REVOKED.

4. THERE WAS FILED WITH THE BOARD TWO STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION (HEREINAFTER REFERRED TO AS PETITIONS). ONE OF THE PETITIONS BEARING THE SIGNATURES OF EIGHT PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT WAS IDENTIFIED AT THE HEARING AS PETITION #1. THE OTHER PETITION BEARING THE SIGNATURES OF NINE PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT WAS IDENTIFIED AT THE HEARING AS PETITION #2. ALL OF THE SIGNATURES OF PERSONS APPEARING ON PETITION #1 ALSO APPEAR ON PETITION #2. THOMAS BUDD WHO APPEARED AT THE BOARD HEARING IN SUPPORT OF BOTH PETITIONS TESTIFIED IN THE MANNER INDICATED IN THE FOLLOWING PARAGRAPH.

5. BUDD WAS CALLED TO THE OFFICE OF MR. BROWNELL, A MEMBER OF MANAGEMENT OF THE RESPONDENT COMPANY, ON THE MORNING THAT THE NOTICE TO EMPLOYEES OF THE APPLICATION FOR CERTIFICATION (FORM 5) WAS POSTED IN THE PLANT. FOLLOWING BROWNELL'S INSTRUCTIONS, BUDD ASCERTAINED FROM THE EMPLOYEES WHETHER THEY WERE IN FAVOUR OR OPPOSED TO THE UNION. HE GAVE A LIST OF THE NAMES OF THOSE EMPLOYEES WHO INDICATED THEY WERE OPPOSED TO THE UNION TO BROWNELL. A SHORT WHILE LATER BUDD WAS AGAIN CALLED TO BROWNELL'S OFFICE AND WAS GIVEN PETITION #1. THE PETITION DATED DECEMBER 1ST, 1966 WHICH IS TYPEWRITTEN BEARS A HEADING EXPRESSING OPPOSITION TO THE APPLICANT. THE NAMES OF THE NINE PERSONS SUPPLIED BY BUDD TO BROWNELL ARE TYPED IN A COLUMN ON THE LEFT HAND SIDE OF THE PETITION WITH A SPACE INDICATED FOR THE SIGNATURES OF THE PERSONS CONCERNED. UPON BROWNELL'S INSTRUCTIONS BUDD WENT AROUND THE PLANT DURING WORKING HOURS AND SECURED EIGHT SIGNATURES OPPOSITE THE TYPED NAMES OF THE PERSONS IN QUESTION. BUDD THEREUPON RETURNED THE PETITION TO BROWNELL. THE FOLLOWING MORNING BUDD WAS AGAIN SUMMONED TO BROWNELL'S OFFICE. ON THAT OCCASION BROWNELL RECOMMENDED TO BUDD THAT THE EMPLOYEES OPPOSING THE APPLICATION RETAIN THE SERVICES OF A SPECIFIED LAW FIRM IN BRANTFORD FOR THE PURPOSE OF PREPARING ANOTHER PETITION. ACTING ON BROWNELL'S ADVICE, BUDD WENT TO THE FIRM OF SOLICITORS SUGGESTED BY BROWNELL, BRINGING WITH HIM THE EXECUTED PETITION #1. PETITION #2 WAS PREPARED IN THE OFFICES OF THE SOLICITORS. THIS PETITION DATED DECEMBER 6TH, 1966 HAS A TYPEWRITTEN HEADING EXPRESSING OPPOSITION TO THE UNION. THE SAME NINE NAMES THAT ARE TYPED ON PETITION #1 ALSO ARE TYPED ON PETITION #2 WITH A SPACE INDICATED FOR THE SIGNATURES OF THE PERSONS CONCERNED. BUDD THEREUPON WENT AROUND THE PLANT AND SECURED THE SIGNATURES OF ALL NINE PERSONS ON THE PETITION. AS WELL HE SECURED THEIR SIGNATURES ON AN ADDITIONAL DOCUMENT AUTHORIZING THE FIRM OF SOLICITORS TO ACT ON THEIR BEHALF.

6. AT THE CONCLUSION OF BUDD'S TESTIMONY, THE BOARD INVITED THE PARTIES TO MAKE REPRESENTATIONS AS TO THE WEIGHT THAT SHOULD BE GIVEN TO THE PETITIONS IN LIGHT OF BUDD'S EVIDENCE. AFTER CONSIDERING THE EVIDENCE AND REPRESENTATIONS THE BOARD ORALLY INFORMED THE PARTIES AT THE HEARING THAT IN VIEW OF THE ACTIVE ROLE PLAYED BY MANAGEMENT IN THE ORIGINATION AND PREPARATION OF THE TWO PETITIONS, THE SECOND OF WHICH THE BOARD FOUND TO BE DERIVED FROM AND DEPENDENT UPON THE FIRST, THE BOARD WAS NOT PREPARED TO ACCEPT THE DOCUMENTS AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE PERSONS WHOSE SIGNATURES APPEAR UPON THEM. ACCORDINGLY, THE PETITIONS DO NOT WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. IT WAS NOT NECESSARY THEREFORE FOR THE BOARD TO ENTERTAIN THE ALLEGATIONS MADE BY THE APPLICANT OF MANAGEMENT SUPPORT OF THE PETITIONS.

7. COUNSEL FOR THE GROUP OF EMPLOYEES DID NOT APPEAR TO BE FAMILIAR WITH THE CONSIDERATIONS WHICH THE BOARD TAKES INTO ACCOUNT IN DETERMINING THE WEIGHT TO BE GIVEN TO PETITIONS FILED IN OPPOSITION TO CERTIFICATION APPLICATIONS. ACCORDINGLY, THE BOARD HAS QUOTED IN PARAGRAPHS 8 AND 9 BELOW PASSAGES FROM TWO PREVIOUS DECISIONS BY WAY OF SETTING OUT ITS WELL ESTABLISHED POLICIES RELATING TO PETITIONS AND THE REASONS FOR THOSE POLICIES.

8. IN THE SINNOTT NEWS CASE 58 C.L.L.C. 1722; C.L.S. 76-605 THE BOARD MADE THE FOLLOWING STATEMENT:

IN ASSESSING THE WEIGHT TO BE ATTACHED TO DOCUMENTS SUBMITTED IN OPPOSITION TO AN APPLICATION, THE CIRCUMSTANCES UNDER WHICH THESE DOCUMENTS ORIGINATED AND WERE CIRCULATED OR SIGNED BECOME AN IMPORTANT FACTOR. AMONG OTHER THINGS, THE BOARD SEEKS ASSURANCES FROM PERSONS WITH FIRST-HAND KNOWLEDGE THAT MANAGEMENT HAS PLAYED NO PART IN THE ORIGINATING, PREPARATION OR CIRCULATION OF THE DOCUMENT. IT DOES SO BECAUSE THE FACT IS THAT IN A NOT INSIGNIFICANT NUMBER OF CASES THE HAND OF MANAGEMENT IS ALL TOO EVIDENT IN STIMULATING OPPOSITION TO THE APPLICATIONS FOR CERTIFICATION. IT IS OBVIOUS THAT DIFFERENT CONSIDERATIONS MAY APPLY WHERE THIS PROVES TO BE THE CASE, THAN WHERE THE EVIDENCE ESTABLISHES THAT THE DOCUMENTS IN OPPOSITION HAVE BEEN OBTAINED SOLELY THROUGH THE EFFORTS OF THE EMPLOYEES THEMSELVES AND WITHOUT MANAGEMENT ASSISTANCE.

9. IN THE PIGOTT MOTOR (1961) LIMITED CASE 63 C.L.L.C. 1125; C.L.S. 76-903 THE BOARD STATED:

THERE ARE CERTAIN FACTS OF LABOUR-MANAGEMENT RELATIONS OF WHICH THIS BOARD HAS, AS A RESULT OF ITS EXPERIENCE IN SUCH MATTERS, BEEN COMPELLED TO TAKE COGNIZANCE. ONE OF THESE FACTS IS THAT THERE ARE STILL EMPLOYERS WHO, THROUGH IGNORANCE OR DESIGN, SO CONDUCT THEMSELVES AS TO DENY, ABRIDGE OR INTERFERE IN THE RIGHTS OF THEIR EMPLOYEES TO JOIN TRADE UNIONS OF THEIR OWN CHOICE AND TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER. IN VIEW OF THE RESPONSIVE NATURE OF HIS RELATIONSHIP WITH HIS EMPLOYER, AND OF HIS NATURAL DESIRE TO WANT TO APPEAR TO IDENTIFY HIMSELF WITH THE INTERESTS AND WISHES OF HIS EMPLOYER, AN EMPLOYEE IS OBVIOUSLY PECULIARLY VULNERABLE TO INFLUENCES, OBVIOUS OR DEVIOUS, WHICH MAY OPERATE TO IMPAIR OR DESTROY THE FREE EXERCISE OF HIS RIGHTS UNDER THE ACT. IT IS PRECISELY FOR THIS REASON, AND BECAUSE THE BOARD HAS DISCOVERED IN A NOT INCONSIDERABLE NUMBER OF CASES THAT MANAGEMENT HAS IMPROPERLY INHIBITED OR INTERFERED WITH THE FREE EXERCISE BY EMPLOYEES OF THEIR RIGHTS UNDER THE ACT, THAT THE BOARD HAS REQUIRED EVIDENCE IN A FORM AND OF A NATURE WHICH WILL PROVIDE SOME REASONABLE

ASSURANCE THAT A DOCUMENT, SUCH AS A PETITION, SIGNED BY EMPLOYEES PURPORTING TO EXPRESS OPPOSITION TO THE CERTIFICATION OF A TRADE UNION TRULY AND ACCURATELY REFLECTS THE VOLUNTARY WISHES OF THE SIGNATORIES.

10. IN THE PEEL BLOCK COMPANY CASE 63 C.L.L.C. 1154; C.L.S. 76-921, ON THE EVIDENCE BEFORE IT THE BOARD ARRIVED AT CERTAIN CONCLUSIONS QUOTED BELOW WHICH IN OUR VIEW ARE EQUALLY APPLICABLE WITH RESPECT TO THE EVIDENCE BEFORE THE BOARD IN THE INSTANT CASE.

ON THE EVIDENCE IN THIS CASE THE EMPLOYEES WOULD, IN OUR VIEW, HAVE HAD EVERY REASON TO BELIEVE, AS WE MUST FIND WAS IN REALITY THE FACT, THAT THEIR EMPLOYER FAVOURED AND SUPPORTED THE PETITION AND WOULD LIKELY KNOW OR HAVE ACCESS TO THE IDENTITY OF THOSE WHO SIGNED IT. FURTHER, WE ARE IMPELLED TO FIND THAT MANAGEMENT'S INTEREST AND CONDUCT IN THE MATTER WAS SO OSTENSIBLY MEANINGFUL TO THEM AS REASONABLY AND LIKELY TO BE CONSTRUED BY THE EMPLOYEES AS AN OPEN INVITATION FOR THEM TO PROCLAIM THEIR LOYALTY TO THEIR EMPLOYER BY SIGNING THE PETITION ... IN THE EYES OF THE EMPLOYEES, MANAGEMENT BY ITS CONDUCT HAD CONSTITUTED ITSELF A PROTAGONIST IN A CAMPAIGN TO DEFEAT THE UNION ... IN OUR VIEW, THE ACTIVITIES OF MANAGEMENT IN THIS CASE WERE OF SUCH A CHARACTER AND OF SUCH MAGNITUDE THAT IT IS REASONABLE TO INFER THAT MANY OF THE PERSONS WHO SIGNED THE PETITION ... WERE INDUCED OR PROMPTED TO DO SO SOLELY BECAUSE OF THE PARTICIPATION OF MANAGEMENT.

11. IN THE INSTANT CASE, ON THE EVIDENCE WE ARE SATISFIED THAT THE EMPLOYEES WHO SIGNED THE PETITION WERE AWARE OF MANAGEMENT'S ROLE IN THE INSTIGATION AND PREPARATION OF THE PETITIONS AND THAT THEY HAD EVERY REASON TO BELIEVE THAT THEIR SUPPORT OR NON-SUPPORT OF THE PETITIONS WOULD BE KNOWLEDGE IN THE HANDS OF THEIR EMPLOYER.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: JANUARY 17, 1967.

WHILE I AM IN AGREEMENT WITH THE RESULT IN THIS DECISION, I WISH TO DISASSOCIATE MYSELF FROM WHAT WAS SAID BY OTHER PANELS OF THIS BOARD



CONCERNING EMPLOYERS GENERALLY AS SET OUT IN PARAGRAPHS 8, 9, AND 10 OF MY COLLEAGUES DECISION.

FROM MY READING OF THE DECISION OF MY COLLEGGUES IN THE INSTANT CASE, THE PASSAGES QUOTED IN PARAGRAPHS 8 AND 9 PURPORT TO BE EXPLANATORY OF THE POLICY OF THE BOARD CONCERNING PETITIONS FILED IN OPPOSITION TO CERTIFICATION PROCEEDINGS.

AS I UNDERSTAND THE POLICY ENUNCIATED BY MY COLLEAGUES, IT IS THAT BECAUSE IN THE PAST, THE HAND OF MANAGEMENT HAS BEEN EVIDENT IN STIMULATING OPPOSITION TO APPLICATIONS FOR CERTIFICATION, AND BECAUSE IN THE PAST EMPLOYERS THROUGH IGNORANCE OR DESIGN HAVE SO CONDUCTED THEMSELVES AS TO DENY, ABRIDGE OR INTERFERE IN THE RIGHTS OF THEIR EMPLOYEES TO JOIN TRADE UNIONS THAT THE BOARD SHOULD BEAR THIS IN MIND WHEN HEARING CASES BEFORE IT CONCERNING PETITIONS. IF THIS BE THE BOARD'S POLICY AT THE PRESENT TIME, I UNRESERVEDLY DISASSOCIATE MYSELF FROM IT, AND SUGGEST THAT IS AGAINST MY CONCEPT OF BRITISH JUSTICE.

WITH THE GREATEST OF RESPECT, I WOULD SUBMIT THAT THE ONLY CONSIDERATION WHICH SHOULD BE OF CONCERN TO THIS BOARD WHEN DEALING WITH PETITIONS IS THAT THE PETITION TRULY AND ACCURATELY REFLECTS THE VOLUNTARY WISHES OF THE SIGNATORIES.

I WOULD SAY FURTHER THAT WHEN I AM HEARING A CASE INVOLVING PETITIONERS, BOTH NOW AND IN THE FUTURE, I WILL NOT, TO THE BEST OF MY ABILITY, HAVE ANY PRECONCEIVED CONCEPTION OF SUSPICION NOR INBORN PREJUDICES ARISING FROM PREVIOUS CASES WHICH WILL SO INFLUENCE MY CONSIDERATION OF THE EVIDENCE AS TO VIEW ALL SUCH EVIDENCE AS SUSPECT.

WE HAVE HAD AN OPPORTUNITY OF READING THE DECISION OF BOARD MEMBER J. E. C. ROBINSON IN THIS MATTER AND WOULD COMMENT AS FOLLOWS. THE BOARD MAKES ITS INQUIRIES WITH RESPECT TO THE ORIGATION, PREPARATION AND CIRCULATION OF PETITIONS FILED IN OPPOSITION TO APPLICATIONS FOR CERTIFICATION SOLELY TO SATISFY ITSELF THAT THE PETITIONS TRULY REPRESENT A VOLUNTARY EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGN THEM. AS IS SET OUT IN THE QUOTED PASSAGES FROM THE SINNOTT NEWS CASE AND THE PIGOTT MOTORS (1961) LIMITED CASE, THE BOARD FOLLOWS THIS PROCEDURE BECAUSE IN MANY CASES, INCLUDING THE INSTANT CASE, THE BOARD HAS FOUND THAT IT HAS BEEN MANAGEMENT RATHER THAN THE EMPLOYEES THEMSELVES WHO HAVE INSTIGATED THE PETITIONS. IN OUR VIEW THE QUOTED PASSAGES ARE NOT OPEN TO THE INTERPRETATION SUGGESTED BY BOARD MEMBER ROBINSON. IT WOULD OF COURSE BE ENTIRELY IMPROPER FOR THE BOARD TO MAKE A DETERMINATION AS TO THE WEIGHT TO BE GIVEN TO A PETITION OTHER THAN STRICTLY ON THE EVIDENCE BEFORE IT IN AN INDIVIDUAL CASE, AND WE TOTALLY REJECT ANY SUGGESTION THAT THE BOARD DOES OTHERWISE.

12487-66-R: THE CUSTODIAN AND MAINTENANCE ASSOCIATION OF THE KITCHENER PUBLIC SCHOOL BOARD (APPLICANT) V. KITCHENER PUBLIC SCHOOL BOARD (RESPONDENT)

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: C. ROPP FOR THE APPLICANT, J. J. KELLY, Q.C., AND J. F. TUMMON FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN J. H. BROWN AND BOARD MEMBER  
P. J. O'KEEFE: JANUARY 10, 1967.

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2. THIS IS AN APPLICATION FOR CERTIFICATION

3. THE APPLICANT HAS NOT PREVIOUSLY MADE APPLICATION FOR CERTIFICATION. THE BOARD ACCORDINGLY CALLED UPON THE APPLICANT TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. CLARENCE ROPP GAVE THE FOLLOWING TESTIMONY RELATING TO THE APPLICANT ORGANIZATION. AN INFORMAL ASSOCIATION OF CUSTODIAN AND MAINTENANCE EMPLOYEES OF THE RESPONDENT HAS BEEN IN EXISTENCE FOR SOME CONSIDERABLE NUMBER OF YEARS. THIS ASSOCIATION IN THE PAST HAS ELECTED OFFICERS AND HAS HAD DEALINGS WITH THE RESPONDENT. IT HAD, HOWEVER, NO CONSTITUTION. A MEETING OF THE CUSTODIAN AND MAINTENANCE EMPLOYEES WAS HELD IN SEPTEMBER OF 1966 WITH A VIEW TO ESTABLISHING A FORMAL ORGANIZATION FOR THE PURPOSE OF MAKING APPLICATION TO THIS BOARD FOR CERTIFICATION. AT THIS MEETING THE EMPLOYEES PRESENT, AS A FIRST STEP, DECIDED TO ELECT A NEW SLATE OF OFFICERS. A VOTE WAS TAKEN AT THE MEETING AND AN EXECUTIVE CONSISTING OF A PRESIDENT, VICE-PRESIDENT, SECRETARY, TREASURER AND CHAIRMAN OF RELATIONS WAS ELECTED. ROPP WAS ELECTED PRESIDENT.

5. SUBSEQUENT TO THE MEETING ROPP PREPARED A DRAFT CONSTITUTION WHICH WAS TYPED BY THE SECRETARY EMPLOYED IN THE OFFICE OF THE PUBLIC SCHOOL WHERE ROPP WAS EMPLOYED AS A CUSTODIAN. COPIES OF THE DRAFT CONSTITUTION WERE DELIVERED TO HIM BY THE PRINCIPAL OF THE SCHOOL. AT A FURTHER MEETING OF THE CUSTODIAN AND MAINTENANCE STAFF OF THE RESPONDENT THE CONSTITUTION WAS DISCUSSED AND AMENDMENTS TO IT WERE PROPOSED BY THOSE PRESENT. AT THIS MEETING THE MAJORITY OF THE PERSONS FOR WHOM EVIDENCE OF MEMBERSHIP HAS BEEN FILED BY THE APPLICANT SIGNED INDIVIDUAL COMBINATION APPLICATIONS FOR MEMBERSHIP IN THE ASSOCIATION AND RECEIPT CARDS INDICATING THE PAYMENT OF \$1.00 INITIATION FEE. THE EVIDENCE OF MEMBERSHIP FILED WITH THE BOARD FOR THE REMAINING PERSONS WAS SECURED WITHIN THE NEXT COUPLE DAYS.

6. ROPP THEREUPON REVISED THE CONSTITUTION IN ACCORDANCE WITH THE AMENDMENTS PROPOSED AT THE PREVIOUS MEETING AND HAD THE SECRETARY IN THE OFFICE TYPE THE CONSTITUTION. AGAIN, THE PRINCIPAL DELIVERED COPIES OF THE CONSTITUTION TO ROPP. AT YET ANOTHER MEETING THE CONSTITUTION WAS ADOPTED BY THE CUSTODIAN AND MAINTENANCE EMPLOYEES OF THE RESPONDENT. ALL OF THE MEETINGS WERE HELD IN THE EVENING AFTER WORKING HOURS. TWO OF THE MEETINGS WERE HELD IN SCHOOL PREMISES WITH THE ACQUIESCENCE OF THE RESPONDENT.

7. FIRST OF ALL, THE BOARD HAS HELD THAT IN ORDER TO ACQUIRE THE STATUS OF A TRADE UNION AN ORGANIZATION MUST ELECT OFFICERS IN ACCORDANCE

WITH ITS CONSTITUTION (SEE J. HARRIS & SONS LTD. CASE 1960 C.C.H. C.L.L.C. 416,177; C.L.S. 76-693; BORG FABRICS LIMITED CASE BOARD FILE No. 12413-66-R). IN THE INSTANT CASE THE ELECTION OF OFFICERS TOOK PLACE PRIOR TO THE ADOPTION OF THE CONSTITUTION AND THERE WAS NO ELECTION OR CONFIRMATION OF THE ELECTION OF OFFICERS IN THE ASSOCIATION AFTER THE CONSTITUTION WAS ADOPTED.

8. FURTHER, ARTICLE III OF THE CONSTITUTION PRECLUDES FROM MEMBERSHIP IN THE ASSOCIATION PERSONS EMPLOYED BY THE RESPONDENT DURING AN INITIAL SIX MONTH PROBATIONARY PERIOD. IN THE GAYMER AND OULTRAM CASE (1954) CCH C.L.L.R. TRANSFER BINDER '49-'54 417,073; C.L.S. 76-429, THE BOARD REFUSED TO CONFER BARGAINING RIGHTS ON A TRADE UNION WHICH DIS-FRANCHISED SOME OF THE EMPLOYEES WHOM IT WOULD BE REQUIRED TO REPRESENT IF IT WERE CERTIFIED. THE FACTS OF THE INSTANT CASE, HOWEVER, FALL SQUARELY WITHIN THE PURVIEW OF THE LINDSAY ANTENNA & SPECIALTY PRODUCTS CASE O.L.R.B. MONTHLY REPORT, JULY 1961, P. 125. IN THAT CASE THE BOARD DECLINED TO CERTIFY THE APPLICANT ON THE GROUNDS THAT ITS CONSTITUTION BARRED FROM ADMISSION TO MEMBERSHIP EMPLOYEES EMPLOYED FOR A PERIOD OF LESS THAN THREE MONTHS.

9. MOREOVER, ALL OF THE EVIDENCE OF MEMBERSHIP WAS SECURED PRIOR TO THE ADOPTION OF THE CONSTITUTION. THE M. LOEB LIMITED CASE O.L.R.B. MONTHLY REPORT, MAY 1962, P. 69 STANDS FOR THE PROPOSITION THAT WHERE EVIDENCE OF MEMBERSHIP IS SECURED PRIOR TO THE TIME THE APPLICANT CAME INTO EXISTENCE AS AN ORGANIZATION THE BOARD DOES NOT REGARD SUCH EVIDENCE AS VALID IN THE ABSENCE OF OTHER EVIDENCE THAT THE ALLEGED MEMBERS DID SOME ACT CONSISTENT WITH MEMBERSHIP AFTER THE APPLICANT WAS FORMED. IN THE INSTANT CASE THERE IS NO EVIDENCE OF ANY STEPS BEING TAKEN AFTER THE ADOPTION OF THE CONSTITUTION THAT WOULD HAVE THE EFFECT OF RE-AFFIRMING THE MEMBERSHIP OF THE PERSONS CONCERNED IN THE ASSOCIATION.

10. AS WELL, THE FORM ITSELF OF THE EVIDENCE OF MEMBERSHIP DOES NOT APPEAR TO MEET THE BOARD'S REQUIREMENTS. THAT IS TO SAY, IN THE CASE OF FOUR OF THE FIVE PERSONS SHOWN AS COLLECTORS OF THE \$1.00 INITIATION FEES, THE APPLICANT ADMITS THAT THE SIGNATURES APPEARING ON THE RECEIPT PORTION OF THE CARDS IS THAT OF THE TREASURER RATHER THAN THE COLLECTOR, ALTHOUGH THE RECEIPT FORM SPECIFICALLY READS "SIGNATURE OF PERSON WHO ACTUALLY RECEIVED THE MONEY" (SEE ROLARK CHEQUE SERVICE, DIVISION OF ROLPH CLARK STONE LIMITED CASE O.L.R.B. MONTHLY REPORT, MARCH 1965, P. 642).

11. FINALLY, IT MAY BE THAT THE EVIDENCE OF THE ASSISTANCE RENDERED TO THE APPLICANT BY THE RESPONDENT CONSTITUTES A VIOLATION OF SECTION 10 OF THE ACT WHICH PROVIDES THAT THE BOARD SHALL NOT CERTIFY A TRADE UNION IF AN EMPLOYER HAS PARTICIPATED IN ITS FORMATION OR HAS CONTRIBUTED SUPPORT TO IT.

12. HAVING REGARD TO ALL THE EVIDENCE AND FOR THE REASONS INDICATED ABOVE, THE BOARD IS NOT PREPARED TO GRANT THE APPLICANT THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT. MOREOVER, EVEN IF WE WERE TO ASSUME THAT THE APPLICANT HAD ESTABLISHED ITS STATUS AS A TRADE UNION, AGAIN FOR REASONS INDICATED ABOVE, THE BOARD WOULD NOT HAVE FOUND THAT THE APPLICANT WAS ENTITLED TO CERTIFICATION AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES WHICH IT IS SEEKING IN THE INSTANT APPLICATION.

13. THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

JANUARY 10, 1967.

I AGREE WITH THE DECISION OF MY COLLEAGUES THAT THIS APPLICATION FOR CERTIFICATION BE DISMISSED. THAT BEING SO, IT IS UNNECESSARY FOR ME TO MAKE A DETERMINATION AS TO WHETHER I WOULD GRANT THE APPLICANT THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT. I WOULD POINT OUT, HOWEVER, THAT ONLY IN PARAGRAPH 7 DO MY COLLEAGUES PUT FORWARD THE REASON WHY THEY FAILED TO GRANT TO THE APPLICANT THE STATUS OF TRADE UNION WITHIN THE MEANING OF THE ACT. I AM OF THE OPINION THAT IT IS OPEN TO ARGUMENT WHETHER THE FAILURE OF AN ORGANIZATION TO ELECT OR CONFIRM THE ELECTION OF OFFICERS SUBSEQUENT TO THE ADOPTION OF ITS CONSTITUTION SHOULD, BY ITSELF, DEPRIVE THAT ORGANIZATION FROM ACQUIRING THE STATUS OF A TRADE UNION.

HAVING REGARD TO ALL OF THE EVIDENCE, HOWEVER, AND FOR THE COLLECTIVE REASONS INDICATED IN PARAGRAPHS 8, 9, 10 AND 11 OF MY COLLEAGUES' DECISION, I WOULD FIND THAT THE APPLICANT WAS NOT ENTITLED TO CERTIFICATION AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES WHICH IT IS SEEKING IN THIS APPLICATION.

12491-66-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS A.F.L.-C.I.O.-C.L.C.  
(APPLICANT) v. WEBPAX LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT THE HEARING: CHARLES BORSK FOR THE APPLICANT,  
AND W. S. COOK, JOHN P. SANDERSON AND  
R. EDMUNDS FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 24, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS A WEEK CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.



3. A QUESTION HAS ARISEN WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT. ONE OF THE CARDS FILED WAS NOT SIGNED BY THE EMPLOYEE IN QUESTION BUT BY THE COLLECTOR, ONE ROSA TEMPRILE. WE ARE SATISFIED HOWEVER THAT MISS TEMPRILE WAS AUTHORIZED BY THE EMPLOYEE TO COMPLETE HIS CARD FOR HIM AND SIGN HIS NAME THERETO AT THE TIME HE AGREED TO JOIN THE APPLICANT UNION. WE ARE FURTHER SATISFIED THAT ALTHOUGH THE EMPLOYEE DID NOT PAY ANY MONEY TO MISS TEMPRILE AT THE TIME HE DISCUSSED THE MATTER WITH HER HE INTENDED TO REPAY THE DOLLAR, WHICH SHE ADVANCED ON HIS BEHALF, AT A LATER DATE. THE APPLICANT'S BEST POSITION IS THAT IT IS ONLY ENTITLED TO A VOTE AND THIS IS SO WHETHER OR NOT THIS PARTICULAR CARD IS COUNTED.

4. IT IS CLEAR THAT NO RESPONSIBLE OFFICER OF THE APPLICANT WAS AWARE OR, IN OUR VIEW, OUGHT TO HAVE BEEN AWARE OF THE LOAN TRANSACTION. MISS TEMPRILE, WHO SIGNED UP ALL THE EMPLOYEES FOR WHOM THE APPLICANT FILED EVIDENCE OF MEMBERSHIP, HOLDS NO OFFICE OR POSITION IN THE UNION. THE ONLY REMAINING QUESTION THEN IS WHETHER DOUBT HAS BEEN CAST ON THE OTHER EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. ON THE BASIS OF ALL THE EVIDENCE BEFORE US INCLUDING THAT OF MISS TEMPRILE WHOSE EVIDENCE WE ACCEPT WE ARE NOT PREPARED TO FIND THAT DOUBT HAS BEEN CAST ON THE OTHER EVIDENCE OF MEMBERSHIP SUCH AS TO WARRANT THE DISMISSAL OF THE APPLICATION.<sup>1</sup>

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

12492-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC. (APPLICANT) v. RCA VICTOR COMPANY, LTD. (RESPONDENT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: IAN G. SCOTT, JAMES DONOFRIO AND WAYNE MULLEN FOR THE APPLICANT, A. J. CLARK, WM. C. BLACK AND P. KERR FOR THE RESPONDENT, AND R. RUSSELL AND MIKE BOSNICH FOR THE INTERVENER.

DECISION OF THE BOARD:

JANUARY 17, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE INTERVENER, WHICH HAS FILED EVIDENCE OF MEMBERSHIP WITH RESPECT TO CERTAIN OF THE EMPLOYEES OF THE RESPONDENT, RAISES THE OBJECTION THAT THE APPLICATION IS PREMATURE, IN THAT A SUBSTANTIAL BUILD-UP OF THE RESPONDENT'S WORK FORCE WILL TAKE PLACE IN THE FUTURE.

2. THERE IS NO SERIOUS DISPUTE AS TO THE FACTS. THE UNDERTAKING IN QUESTION IS A NEW PLANT FOR THE MANUFACTURE OF COLOUR TELEVISION PICTURE TUBES. CONSTRUCTION OF THE NEW PLANT HAS NOT YET BEEN COMPLETED. PORTIONS OF THE PLANT, HOWEVER, ARE COMPLETE AND PORTIONS OF IT ARE IN USE. IT IS CONTEMPLATED THAT EVENTUALLY SOME 300 TO 400 PERSONS WILL BE EMPLOYED IN THE BARGAINING UNIT, ALTHOUGH THERE IS NO SCHEDULE FOR HIRING EMPLOYEES IN SUCH NUMBERS. THE MANNER AND RATE AT WHICH THE EMPLOYMENT FORCE IS BUILD-UP WILL DEPEND UPON A NUMBER OF FACTORS, INCLUDING DEMAND FOR THE COMPANY'S PRODUCTS. IN THIS CONNECTION IT MAY BE NOTED THAT THE PRODUCTION SCHEDULE ORIGINALLY ESTABLISHED FOR 1967 HAS BEEN REDUCED. FURTHER, HIRING OF NEW EMPLOYEES, WHEN IT DOES TAKE PLACE, WILL BE DONE OVER A PROTRACTED PERIOD OF TIME, BECAUSE OF THE NECESSITY OF TRAINING NEW EMPLOYEES AND SUPERVISORY STAFF, AND OF DELIVERY AND INSTALLATION OF NEW EQUIPMENT. THE PRODUCTION OPERATION PRESENTLY BEING CARRIED ON BY THE RESPONDENT AT THE NEW PLANT IS THE ASSEMBLY OF TELEVISION TUBES. THIS OPERATION INVOLVES SOME 43 PERSONS, AND THIS NUMBER IS SUFFICIENT FOR THE WORK NOW BEING CARRIED ON. IT IS EXPECTED THAT THERE WILL BE AN INCREASE IN THE WORKING FORCE IN THE SUMMER OF 1967, BUT IT IS NOT EXPECTED THAT THIS BUILD-UP WOULD LEAD TO THE EMPLOYMENT FORCE OF 300 TO 400, WHICH IS ONLY TO BE ACHIEVED IN THE MORE DISTANT FUTURE.

3. IN THE EMIL FRANT AND PETER WASELOVICH CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16057; C.L.S. 76-539, THE BOARD RECOGNIZED THAT IN BUILD-UP SITUATIONS IT WAS FACED WITH THE TASK OF BALANCING THE RIGHTS OF PERSONS PRESENTLY EMPLOYED TO COLLECTIVE BARGAINING AND THE RIGHT OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. THE BOARD IN THAT CASE WENT ON TO OUTLINE THE CONSIDERATIONS WHICH IT HAS TAKEN INTO ACCOUNT IN MAKING ITS DETERMINATION IN THE FOLLOWING TERMS:

FACED WITH THIS CONFLICT OF INTERESTS, THE BOARD HAS, IN THE PAST, IN SOME CASES, REFUSED TO CERTIFY OR ORDER AN IMMEDIATE VOTE - AND HAS DIRECTED THAT A VOTE BE TAKEN AT A LATER DATE - WHERE, ON ALL THE EVIDENCE, IT APPEARED TO THE SATISFACTION OF THE BOARD THAT THE EMPLOYEES DID NOT CONSTITUTE A SUBSTANTIAL AND REPRESENTATIVE SEGMENT OF THE WORK FORCE TO BE EMPLOYED. OF COURSE IN SUCH CASES IT MUST BE ESTABLISHED THAT THERE IS A REAL LIKELIHOOD THAT THE INCREASE IN THE WORK FORCE WILL TAKE PLACE WITHIN A REASONABLE PERIOD OF TIME AND, IF IT APPEARS THAT THE BUILD-UP DEPENDS ON FACTORS BEYOND THE CONTROL OF THE EMPLOYER SUCH AS THE SALEABILITY OF PRODUCTS, THE

PRESENCE OF SUFFICIENT WORKERS OR THE AVAILABILITY OF MATERIALS FOR, SAY, THE PURPOSE OF PLANT EXPANSION, THE BOARD, INSTEAD OF DIRECTING A VOTE TO BE HELD IN THE FUTURE, MAY CERTIFY OR ORDER AN IMMEDIATE VOTE DEPENDING ON THE MEMBERSHIP POSITION OF THE APPLICANT.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND IN PARTICULAR TO THE FACT THAT THERE IS NO FIRM SCHEDULE FOR THE HIRING OF VERY SUBSTANTIAL NUMBERS OF EMPLOYEES, AND BEARING IN MIND THAT THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP WITH RESPECT TO 42 OF THE 43 PERSONS IN THE BARGAINING UNIT, THE BOARD IS NOT SATISFIED THAT THERE IS A REAL LIKELIHOOD THAT AN INCREASE IN THE WORK FORCE WILL TAKE PLACE WITHIN A REASONABLE PERIOD OF TIME. THE BOARD, THEREFORE, WILL NOT GIVE EFFECT TO THE INTERVENER'S OBJECTION THAT THIS APPLICATION IS PREMATURE.

5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, SECURITY GUARDS, ENGINEERING AND TECHNICAL STAFF, OFFICE STAFF, CONFIDENTIAL SECRETARIES TO FOREMEN AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED NOVEMBER 25, 1966, ISSUED TO THE CANADIAN UNION OF OPERATING ENGINEERS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12500-66-R: LE SYNDICAT NATIONAL DES TRAVAILLEURS DE CUIR ET DE PLASTIQUE (CSN-CNTU) (APPLICANT) v. HUGH CARSON COMPANY LIMITED (RESPONDENT) v. THE INDEPENDENT EMPLOYEES' UNION OF HUGH CARSON COMPANY LIMITED (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: ROBERT G. BURNS FOR THE APPLICANT, ALASTAIR MACDONALD, Q.C., PAUL B. TETRO, HAROLD HUTCHINSON AND D. WRIGHT FOR THE RESPONDENT, AND JAMES W. TOUHEY, RENE BLANCHETTE, ARTHUR LAROCQUE AND LEO ENTELLE FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 19, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION, MADE ON DECEMBER 2ND, 1966. COUNSEL FOR THE RESPONDENT AND FOR THE INTERVENER HAVE RAISED THE OBJECTION THAT THE APPLICATION IS UNTIMELY. THE EVIDENCE ESTABLISHES THAT A COLLECTIVE AGREEMENT EFFECTIVE APRIL 20TH, 1966, AND TO RUN FOR A TERM OF ONE YEAR, WAS IN EFFECT BETWEEN THE RESPONDENT AND THE INTERVENER AT THE TIME THIS APPLICATION WAS MADE. IT IS CLEAR THAT UNDER SECTION 5 OF THE LABOUR RELATIONS ACT THIS APPLICATION IS UNTIMELY. WHEN THE ABOVE FACTS HAD BEEN ESTABLISHED, COUNSEL FOR THE APPLICANT ACKNOWLEDGED THIS TO BE THE CASE. THE APPLICATION ACCORDINGLY WILL BE DISMISSED.

2. THE BOARD HAS NOT FOUND IN ANY PREVIOUS PROCEEDING BEFORE IT THAT THE APPLICANT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT. AT THE HEARING OF THIS MATTER, CERTAIN EVIDENCE WAS ADDUCED ON BEHALF OF THE APPLICANT WITH A VIEW TO ESTABLISHING THE STATUS OF THE APPLICANT AS A TRADE UNION. THE EVIDENCE CONSISTED OF THE VIVA VOCE EVIDENCE OF CHARLES RUEL, DIRECTOR OF THE CONFEDERATION OF NATIONAL TRADE UNIONS (CNTU) FOR THE OTTAWA-HULL REGION, AND TWO EXHIBITS. EXHIBIT 1 WAS A LETTER DATED DECEMBER 17TH, 1966, FROM THE CNTU TO THE APPLICANT, ADVISING IT THAT ITS "AFFILIATION" HAD BEEN ACCEPTED BY THE CNTU, AT A MEETING OF ITS EXECUTIVE COMMITTEE HELD ON DECEMBER 14TH AND 15TH, 1966. EXHIBIT 2 APPEARS TO SET OUT THE BY-LAWS OF THE APPLICANT. IT IS IN MIMEOGRAPH FORM, AND SUCH INFORMATION AS THE NAME OF THE APPLICANT AND THE PLACE AND DATE OF ITS ORGANIZATION HAVE BEEN INSERTED IN CERTAIN BLANK SPACES. THE FORM ITSELF BEARS NO TITLE, NOR THE NAME OF ANY ISSUER; IT IS NOT DATED AND NO SIGNATURES APPEAR. NO OTHER EVIDENCE WAS OFFERED AND IN PARTICULAR TO VIVA VOCE EVIDENCE AS TO THE ACTUAL ORGANIZATION OF THE APPLICANT OR ANY ELECTION OF OFFICERS. EXHIBIT 2 CONTAINS THE STATEMENT THAT THE APPLICANT WAS FOUNDED AT HULL ON APRIL 8TH, 1966.

3. THERE IS NOTHING IN THE EVIDENCE TO SUGGEST THAT THE APPLICANT EXISTS AS AN ORGANIZATION BY VIRTUE OF ITS AFFILIATION WITH CNTU. IN ANY EVENT, THIS AFFILIATION OCCURRED AFTER THIS APPLICATION HAD BEEN MADE AND AFTER THE EVIDENCE OF MEMBERSHIP IN SUPPORT OF THIS APPLICATION HAD BEEN OBTAINED. "AFFILIATION" SUCH AS THIS MUST BE DISTINGUISHED FROM THE "CHARTERING" OF A NEW LOCAL UNION BY AN EXISTING TRADE UNION. IN THE LATTER CASE, THE NEW ORGANIZATION IS FORMED PURSUANT TO AN EXISTING CONSTITUTION. IN THE INSTANT CASE, HOWEVER, THE APPLICANT WAS INDEPENDENTLY ORGANIZED AND CAME INTO EXISTENCE (SO IT IS ALLEGED) BEFORE DECEMBER 17TH, 1966, THE DATE WHEN ITS AFFILIATION TO THE CNTU WAS ANNOUNCED. THE APPLICANT WAS ALLEGED TO HAVE BEEN FOUNDED ON APRIL 8TH, 1966. THERE WAS NO EVIDENCE RELATING TO ITS ORGANIZATION AT THAT TIME. IN PARTICULAR, THERE WAS NO EVIDENCE OF AN ORGANIZATIONAL MEETING OF AN ADOPTION OF A CONSTITUTION OR THE ELECTION OF OFFICERS PURSUANT TO SUCH CONSTITUTION. IN THESE CIRCUMSTANCES, THE BOARD IS UNABLE TO MAKE THE FINDING THAT THE APPLICANT IS A TRADE UNION. REFERENCE IS MADE TO THE COCHRANE-DUNLOP HARDWARE LIMITED CASE, (1963) BOARD FILE NO. 4672-62-R.



4. AS EVIDENCE OF MEMBERSHIP OF EMPLOYEES OF THE RESPONDENT, THE APPLICANT FILED A NUMBER OF APPLICATIONS FOR MEMBERSHIP, WHICH INDICATED A PAYMENT OF \$1.00 AND WERE SIGNED BY THE EMPLOYEES AND BY WITNESSES. THERE WERE ATTACHED AUTHORIZATIONS FOR THE DEDUCTION OF DUES, LIKEWISE SIGNED BY EMPLOYEES AND WITNESSES. THERE WERE NO RECEIPTS FOR THE MONEY PAYMENT ISSUED BY THE APPLICANT, AND ACCORDINGLY NO COUNTERSIGNATURES OF EMPLOYEES ON ANY RECEIPTS. IN THIS CONNECTION, REFERENCE MAY BE MADE TO THE BOARD'S STATEMENT OF POLICY DATED FEBRUARY 16TH, 1951, C.C.H. CANADIAN LABOUR LAW REPORTS, VOL. 2, ¶16,981. IN SOME CASES THE APPLICATION CARDS BORE DATES MORE THAN SIX MONTHS PRIOR TO THE DATE OF MAKING OF THE APPLICATION. IN SUCH CASES, IT HAS BEEN THE BOARD'S POLICY TO CONSIDER SUCH EVIDENCE AS GOING TO ESTABLISH AN APPLICANT'S RIGHT TO PARTICIPATE IN A REPRESENTATION VOTE, BUT NOT AS SUFFICIENT TO ENTITLE IT TO OUTRIGHT CERTIFICATION. WHERE THE MEMBERSHIP EVIDENCE IS DATED MORE THAN TWELVE MONTHS PRIOR TO THE DATE OF THE APPLICATION, IT WOULD NOT (STANDING BY ITSELF) BE GIVEN WEIGHT BY THE BOARD.

5. FOR THE REASONS STATED IN PARAGRAPH 1 ABOVE, THE APPLICATION IS DISMISSED AS UNTIMELY.

12504-66-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: A. S. MAGERMAN AND JAMES KITTS FOR THE APPLICANT, D. R. BYERS AND E. A. TURNER FOR THE RESPONDENT, PRISCILLA J. TAYLOR FOR THE OBJECTORS.

DECISION OF THE BOARD: JANUARY 31, 1967.

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2. THE APPLICANT APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, AT PORT PERRY, AND AT 35 DUFFLAW AVENUE, TORONTO, AND 36 ADELAIDE STREET WEST, TORONTO.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #1).

4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT PORT PERRY, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #2).

5. FOLLOWING THE APPOINTMENT OF AN EXAMINER TO INQUIRE INTO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WITH RESPECT TO ITS TORONTO OPERATIONS, THE APPLICANT REQUESTED LEAVE TO WITHDRAW ITS APPLICATION WITH RESPECT TO ITS BARGAINING UNIT AT TORONTO. HAVING REGARD TO THE TIME AT WHICH THE APPLICANT'S REQUEST WAS MADE THE BOARD DENIES THE APPLICANT'S REQUEST AND DISMISSES THE APPLICATION WITH RESPECT TO BARGAINING UNIT #1.

6. ONE OF THE RESPONDENT'S EMPLOYEES AT PORT PERRY MADE ALLEGATIONS OF UNFAIR CONDUCT AGAINST THE APPLICANT. THE EVIDENCE CONCERNED ONLY ONE EMPLOYEE AND IT WAS READILY APPARENT FROM THE NATURE OF THE EVIDENCE THAT THE ALLEGATION REFERRED TO AN ISOLATED INCIDENT WHICH HAD NO BEARING ON THE QUANTITY OR QUALITY OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT. THE BOARD ACCORDINGLY FINDS NO SUBSTANCE TO THE ALLEGATION OF UNDUE INFLUENCE MADE BY THE EMPLOYEE AGAINST THE APPLICANT.

7. THE RESPONDENT FILED A LIST CONTAINING THE NAMES OF 38 EMPLOYEES IN BARGAINING UNIT #2. THE APPLICANT FILED MEMBERSHIP EVIDENCE ON BEHALF OF 31 OF THE EMPLOYEES IN BARGAINING UNIT #2.

8. A GROUP OF 21 EMPLOYEES IN BARGAINING UNIT #2 SIGNED A STATEMENT OF OBJECTIONS IN OPPOSITION TO THIS APPLICATION. WHILE THERE WAS CONSIDERABLE CONFLICT IN THE TESTIMONY OF THE OBJECTORS THE EVIDENCE CONCERNING THE MANNER IN WHICH THE SIGNATURES ON THE STATEMENT OF OBJECTIONS WAS OBTAINED INDICATES THAT AFTER OBTAINING THE FIRST 8 SIGNATURES ON THE DOCUMENT, TWO OF THE OBJECTORS REQUESTED PERMISSION FROM THE RESPONDENT'S MANAGER TO HOLD A MEETING IN THE LUNCH ROOM ON ITS PREMISES DURING WORKING HOURS. AFTER PERMISSION WAS OBTAINED, A FORELADY RANG THE BELL WHICH BROUGHT WORK IN THE PLANT TO A HALT AND THE EMPLOYEES WERE SUMMONED TO A MEETING IN THE LUNCH ROOM AT WHICH TIME THE PETITION IN OPPOSITION TO THE APPLICATION WAS DISCUSSED AND SIGNATURES WERE OBTAINED FROM AN ADDITIONAL 13 EMPLOYEES. THE EMPLOYEES WERE PAID FOR THE TIME SPENT AT THE MEETING AND NO OBJECTION WAS MADE BY ANY MEMBER OF MANAGEMENT WHEN THE OPERATIONS AT THE PLANT WAS SHUT DOWN FOR THE PURPOSE OF THE MEETING. THE OBJECTORS' WITNESSES TESTIFIED THAT THEY KNEW OF NO OTHER OCCASION WHEN OPERATIONS AT THE PLANT WAS SHUT DOWN IN ORDER TO PERMIT EMPLOYEES TO HOLD A MEETING. THE WITNESSES TESTIFIED THAT PRIOR TO THE CALLING OF THE MEETING ON THE PREMISES IT WAS COMMON KNOWLEDGE IN THE PLANT THAT A PETITION WAS BEING CIRCULATED.

9. HAVING REGARD TO THE DECISION OF THE BOARD IN THE SHELVING DISPLAYS LIMITED CASE, BOARD FILE NO. 12483-66-R, THE CASES THEREIN REFERRED TO, AND THE CIRCUMSTANCES SURROUNDING THE MANNER IN WHICH THE

FINAL 13 SIGNATURES WERE OBTAINED, THE BOARD IS NOT PREPARED TO HOLD THAT THESE 13 SIGNATURES REPRESENT A VOLUNTARY SIGNIFICATION BY THOSE EMPLOYEES THAT THEY DO NOT WISH TO BE REPRESENTED BY THE APPLICANT AND ACCORDINGLY THEY DO NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT ON BEHALF OF ANY OF THE FINAL 13 SIGNATORIES TO THE PETITION.

10. EVEN IF FULL EFFECT WERE GIVEN TO THE FIRST 8 SIGNATURES ON THE PETITION, IN VIEW OF OUR FINDINGS SET OUT ABOVE, THE REMAINDER OF THE APPLICANT'S MEMBERSHIP EVIDENCE IS NOT SUBJECT TO A VALID CHALLENGE. ACCORDINGLY, IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #2.

13. IN VIEW OF THE RESULT, IT WILL NOT BE NECESSARY FOR THE BOARD TO CONDUCT A FURTHER HEARING TO INQUIRE INTO THE ALLEGATIONS OF UNFAIR PRACTICE MADE BY THE APPLICANT AGAINST THE RESPONDENT IN THIS MATTER.

#### INDEXED ENDORSEMENT - TERMINATION

12407-66-R: FREDERICK WEBB (APPLICANT) v. INTERNATIONAL CHEMICAL WORKERS UNION (RESPONDENT) v. THE WANDER COMPANY OF CANADA LIMITED (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: W. R. MAXWELL FOR THE APPLICANT,  
DONALD MACDONALD FOR THE RESPONDENT, AND W. M. TEMPLE,  
C. K. SCHLIMME, B. M. GORDON AND G. H. FEDYK FOR THE  
INTERVENER.

DECISION OF THE BOARD: JANUARY 19, 1967.

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS BROUGHT UNDER SECTION 45(2) OF THE LABOUR RELATIONS ACT. THE APPLICANT IS AN EMPLOYEE OF THE INTERVENER.

2. SECTION 45(2) READS AS FOLLOWS:

WHERE A TRADE UNION THAT HAS GIVEN NOTICE UNDER SECTION 11 OR SECTION 40 OR THAT HAS RECEIVED NOTICE UNDER SECTION 40 FAILS TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM THE GIVING OF THE NOTICE OR, AFTER HAVING COMMENCED TO BARGAIN BUT BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

3. THE CHRONOLOGY OF EVENTS AS GIVEN IN EVIDENCE BY THE RESPONDENT IS AS FOLLOWS:

8 AUGUST, 1966,	THE INTERNATIONAL CHEMICAL WORKERS UNION CERTIFIED;
16 AUGUST, 1966,	THE UNION FILED NOTICE OF DESIRE TO BARGAIN UNDER SECTION 11 OF THE ACT;
18 AUGUST, 1966,	THE INTERVENER REQUESTED THE UNION TO SUBMIT ITS PROPOSALS BY AUGUST 24TH AND MEET ON AUGUST 26TH;
26 AUGUST, 1966	THE INTERVENER SUGGESTED THE WEEK OF SEPTEMBER 5TH FOR A MEETING;
29 AUGUST, 1966,	NEGOTIATING COMMITTEE ELECTED;
14 SEPTEMBER, 1966,	MEETING WITH INTERVENER ARRANGED FOR OCTOBER 3RD, 1966;
3 OCTOBER, 1966,	UNION REPRESENTATIVE ATTENDS PLANT FOR MEETING WITH COMPANY;
3 NOVEMBER, 1966,	APPLICATION FOR TERMINATION FILED WITH BOARD.

4. ON OCTOBER 3RD, 1966, THE REPRESENTATIVE OF THE RESPONDENT AND TWO OF THE BARGAINING COMMITTEE, WHICH HAD BEEN FORMED ON AUGUST 29TH, MET AT A ROOM AT THE COMPANY'S PLANT. THE COMPANY HAD AGREED TO PROVIDE THE ROOM IN WHICH THE BARGAINING COMMITTEE AND THE UNION REPRESENTATIVE COULD HOLD A MEETING PRELIMINARY TO A BARGAINING CONFERENCE BETWEEN THEM AND THE COMPANY'S BARGAINING REPRESENTATIVE LATER IN THE DAY.



5. UPON HIS ARRIVAL AT THE PRELIMINARY MEETING, THE UNION REPRESENTATIVE WAS INFORMED BY WEBB, THE APPLICANT HEREIN, AND ONE BISSEON, BOTH OF WHOM WERE MEMBERS OF THE BARGAINING COMMITTEE, THAT THEY WISHED TO RESIGN. THE THIRD MEMBER OF THE BARGAINING COMMITTEE HAD ALREADY RESIGNED AT AN EARLIER DATE. AS A RESULT OF THE RESIGNATION OF THE TWO COMMITTEE MEMBERS, THE MEETING WITH THE COMPANY DID NOT TAKE PLACE AND NO PROPOSALS WERE MADE TO THE COMPANY AT THAT TIME. NO PROPOSALS NOR ANY ATTEMPT TO SET UP A NEW MEETING BETWEEN OCTOBER 3RD AND THE DATE OF THE MAKING OF THE INSTANT APPLICATION, ONE MONTH LATER, HAVE BEEN MADE BY THE UNION.

6. IT IS AN INCONTROVERTIBLE FACT, THEREFORE, THAT NO BARGAINING TOOK PLACE BETWEEN THE RESPONDENT AND THE INTERVENER FROM THE GIVING OF NOTICE BY THE UNION ON AUGUST 16TH, 1966, TO THE DATE OF THE APPLICATION HEREIN, A PERIOD OF OVER SIXTY DAYS. THE MAKING OF SUCH A FINDING, HOWEVER, DOES NOT MEAN THAT THE BOARD WILL AUTOMATICALLY TERMINATE THE BARGAINING RIGHTS. THE MAKING OF A DECLARATION TO THAT END LIES WITHIN THE DISCRETION OF THE BOARD AND IN THIS REGARD WE CAN DO NO BETTER THAN TO REPRODUCE THE STATEMENT OF THE BOARD FOUND IN THE DOMINION STORES LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1955-1959 TRANSFER BINDER, ¶16,047; D.L.S. 76-529:

THE PURPOSE OF SECTION 43 OF THE ACT IS TO PROTECT THE EMPLOYEES AND, IN A PROPER CASE, THE EMPLOYER AGAINST A UNION WHICH STAKES OUT A CLAIM TO REPRESENT CERTAIN EMPLOYEES AND THEN TAKES NO STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES. HOWEVER, THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD. SECTION 43 SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 OF THE ACT, BUT RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO BRING THAT FACT TO THE ATTENTION OF THE BOARD SO THAT THE BOARD MAY CALL UPON THE UNION TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE. IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY. IF A REASONABLE DOUBT ARISES AS TO THE DESIRES OF THE EMPLOYEES AT THAT STAGE, THE BOARD MAY TEST THOSE DESIRES BY DIRECTING A REPRESENTATION VOTE. HOWEVER, WHERE THE TARDINESS OF THE UNION IS EXCUSABLE AND ESPECIALLY WHERE IT STILL COMMANDS THE ALLEGIANCE OF A MAJORITY OF THE EMPLOYEES, THE APPLICATION SHOULD BE DISMISSED.

8. THE FAILURE OF THE UNION TO RESPOND TO THE REQUEST OF THE COMPANY OF AUGUST 18TH, THAT IT SUBMIT ITS BARGAINING PROPOSALS AT THAT TIME, WAS NOT EXPLAINED BY THE UNION. IT IS UNDERSTANDABLE THAT SUCH PROPOSALS

MIGHT NOT BE FORTHCOMING UNTIL AFTER THE ELECTION OF THE BARGAINING COMMITTEE ON AUGUST 29TH. THIS HAVING BEEN DONE, HOWEVER, IT WAS OPEN TO THE UNION TO COMMENCE THE BARGAINING PROCESS BY COMPLYING WITH THE INVITATION OF THE COMPANY.

9. IT IS TRUE, HOWEVER, THAT IF THE MEETING ARRANGED FOR OCTOBER 3RD, 1966, HAD PROCEEDED AND HAD RESULTED IN THE COMMENCEMENT OF BARGAINING AT THAT TIME, THE TIME LIMITS OF THE SECTION IN QUESTION WOULD HAVE BEEN MET AND THIS APPLICATION WOULD HAVE BEEN CLEARLY UNTIMELY. IT WAS SUGGESTED BY THE UNION THAT THE APPLICANT, WEBB, HAD JOINED THE BARGAINING COMMITTEE FOR THE PURPOSE OF SABOTAGING THE UNION MOVEMENT, AND THAT THE RESIGNATION OF THE COMMITTEE ON OCTOBER 3RD WAS A THING ENGINEERED BY HIM TO FRUSTRATE THE UNION. HE STATED IN CROSS-EXAMINATION THAT HE HAD NOT BEEN REALLY INTERESTED IN THE UNION IN THE FIRST INSTANCE, BUT FELT THAT HE WANTED TO BE IN ON ANY DECISIONS THAT MIGHT BE MADE BY IT CONCERNING HIS WELFARE. IT SHOULD BE REMEMBERED, OF COURSE, THAT WEBB WAS ELECTED TO THE BARGAINING COMMITTEE BY HIS FELLOW EMPLOYEES. WEBB DENIED THAT HIS PURPOSE IN JOINING THE COMMITTEE WAS TO SABOTAGE THE UNION. BOTH WEBB AND BISSEON STATED THAT THEY HAD RESIGNED BECAUSE OF DISSATISFACTION WITH THE LACK OF PROGRESS BEING MADE BY THE UNION. THEY EMPHASIZED THAT THEY HAD NO KNOWLEDGE OF THE PROPOSALS ABOUT TO BE MADE TO THE COMPANY AT THE MEETING AND STATED THAT THEY HAD NOT BEEN CONTACTED BY THE UNION BETWEEN AUGUST 29TH, WHEN THEY WERE ELECTED, AND THE NOTIFICATION OF THE MEETING OF OCTOBER 3RD. THEY FELT NOTHING POSITIVE HAD BEEN DECIDED WITH RESPECT TO PROPOSALS TO BE NEGOTIATED AT THE AUGUST MEETING AND THAT THE UNION WAS IGNORING THEM. IN THE OPINION OF THE BOARD, THE RESIGNATION OF THE BARGAINING COMMITTEE WAS THE RESULT OF THE FAILURE OF THE UNION TO COMMUNICATE WITH THE BARGAINING COMMITTEE AND KEEP IT INFORMED AS TO WHAT WAS GOING ON AND THAT THE RESIGNATION REFLECTED THE GENERAL DISSATISFACTION OF THE EMPLOYEES.

10. IN SUPPORT OF HIS APPLICATION, THE APPLICANT FILED A STATEMENT OF DESIRE SIGNED BY FIFTY OF THE FIFTY-FIVE EMPLOYEES IN THE BARGAINING UNIT. THE SIGNATURES WERE ATTACHED BETWEEN NOVEMBER 1ST AND 3RD INCLUSIVE. HE SWORE THAT HAVING DECIDED TO GET UP THIS DOCUMENT HE TOLD MR. MACDONALD, THE PLANT MANAGER, WHAT HE WAS ABOUT TO DO AND ASKED HIM HOW TO MAKE IT LEGAL. MACDONALD TOLD HIM TO PUT IN THE NAME OF THE COMPANY AND TO BE SURE THE SIXTY DAYS WERE UP. NOBODY ELSE KNEW OF THIS CONTACT WITH MR. MACDONALD. SATISFACTORY EVIDENCE WAS GIVEN IDENTIFYING THE SIGNATURES APPEARING ON THE DOCUMENT AND THE TIME AND PLACES AT WHICH THEY WERE AFFIXED. THE BOARD IS NOT CALLED UPON TO DETERMINE WHETHER THE ORIGINATION AND CIRCULATION OF THE DOCUMENT WOULD MEET THE REQUIREMENTS OF A STATEMENT OF DESIRE, AS REQUIRED IN TERMINATION APPLICATIONS BROUGHT UNDER SECTION 43 OF THE ACT. THE BOARD IS SATISFIED THAT THE DOCUMENT, TOGETHER WITH THE PIECEMEAL DISINTEGRATION OF THE BARGAINING COMMITTEE, RAISES A REASONABLE DOUBT AS TO WHETHER THE UNION COMMANDS THE ALLEGIANCE OF A MAJORITY OF THE EMPLOYEES.

11. IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD FEELS THAT THE TRUE WISHES OF THE EMPLOYEES CONCERNED SHOULD BE DETERMINED BY A REPRESENTATION VOTE. THE BOARD ACCORDINGLY DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED

IN THE BOARD'S CERTIFICATE OF AUGUST 8TH, 1966, BEING ALL EMPLOYEES OF THE WANDER COMPANY OF CANADA LIMITED EMPLOYED IN ITS ANCA LABORATORIES DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OFFICE AND SALES STAFF. ALL EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - STRIKE UNLAWFUL

12521-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)

V. ANDERSEN, BENNY	HEBERT, LEO	PENNY, BEN
ARSENEAU, BERNARD	HOWARD, STEPHEN	PRAGER, KARL, SR.
BEAUMONT, BRIAN	HRAPCHAK, WALTER	PRAGER, KARL
BEAUVAIS, THOMAS	HUARD, LEO	RAYMOND, JEAN PAUL
BEGIN, BERARD	JONES, GERALD	REID, RUSSELL
BERGERON, FRANK	KINSELLA, LLOYD	RICHARDS, PHIL
BEYFUSS, KLEMENS	KULCHAR, JOHN	ROBERTSON JOHN
BRANT, EARL	LABATT, LAWRENCE	ROMANO, FRED
BRIDGEMEN, MICHAEL	LABATT, TENNYS	RUDDOLPH, ERNEST
BRODERS, BERNARD	LACROIX, HARRY	SQUISSATO, EDMUND
BRODERS, SYLVESTER	LA FLEUR, JEAN	STRUCEL, LOUIS
BROWN, OSCAR	LEBLANC, PAUL	TAYLOR, JAMES
BRULE, ROGER	LEPINE, LENNOX	THIBODEAU, RAYMOND
CARPANINI, ROBERT	MACLENNAN, PHILIP	THOMAS, JOSEPH
COLLIER, DOUGLAS	MARINO, PALMO	TRENTIN, ANTHONY
CORBETT, R. WILLIAM	MAZNIK, JOZEF	TROTTER, RICHARD
COX, JOHN	MCDONALD, JAMES	TROTTIER, CYR
CROSS, RONALD	MCMULTY, MICHAEL	TRAYNOR, ALLAN
CRYAN, THOMAS	MCRAE, MYRLE	TURNER, THOMAS
CVETINOVIC, DOBRIVOJE	MELANSON, CHARLES	VASILIS, ELMAR
DALES, FRANK	MEZALS, ALEX	VINCENT, BENJAMIN
DELANEY, DENIS	MIHALDINECZ, GEORGE	WEBBER, WILLIAM
EASY, VICTOR	MILLEN, MAXWELL	WELLER, DESMOND
FULTON, GEORGE	MONSON, CLIFFORD	WETMORE, TERRY
GALLANT, LOUIS	MORIN, CLARENCE	WHITE, GEORGE
GAMBLIN, PETER	MULLINS, DONALD	WINKLER, JOHN
HARTGERINK, HENRY	NANOS, DANNY	YETMAN, CHESLEY
HEBERT, EDMOND	PAGE, FERDINAND	ZONEY, HARVEY (RESPONDENTS.)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: F. G. HAMILTON, B. H. STEWART AND W. H. BARNES FOR THE APPLICANT, A. E. GOLDEN, A. MACISAAC AND J. J. TRESSIDER FOR THE RESPONDENTS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON:  
JANUARY 13, 1967.

1. THE APPLICANT APPLIED ON DECEMBER 13TH, 1966 FOR A DECLARATION THAT THE STRIKE ENGAGED IN BY THE RESPONDENTS IS UNLAWFUL.
2. THE PARTIES AGREED THAT ALL THE RESPONDENTS ARE IRONWORKERS AND ARE EMPLOYEES OF THE APPLICANT ENGAGED IN THE ERECTION OF AN ATOMIC REACTOR COMPLEX AT PICKERING. THE RESPONDENTS ARE ALL MEMBERS OF LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS.
3. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS IS A MEMBER OF THE ALLIED CONSTRUCTION COUNCIL WHICH WAS, AT ALL RELEVANT TIMES, BARGAINING WITH THE APPLICANT WITH THE ASSISTANCE OF A CONCILIATION OFFICER APPOINTED BY THE MINISTER, FOR THE RENEWAL OF A COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENTS.
4. IT IS THE PRACTICE IN THE IRONWORKERS TRADE THAT INSTRUCTIONS TO PERFORM WORK ARE USUALLY GIVEN TO A CREW OF IRONWORKERS BY A PERSON KNOWN AS A "PUSHER" WHO IS A MEMBER OF THE BARGAINING UNIT AND WHO IN OTHER CIRCUMSTANCES MIGHT BE DESCRIBED AS A "LEAD HAND". THE FOREMAN RECEIVES INSTRUCTIONS FROM HIS GENERAL FOREMAN AND THE FOREMAN PASSES THESE INSTRUCTIONS ON TO THE PUSHER WHO IN TURN PASSES THE INSTRUCTIONS ON TO THE IRONWORKERS.
5. IN THE ABSENCE OF THE PUSHER THE FOREMAN GIVES INSTRUCTIONS DIRECTLY TO THE MEN.
6. WHILE THERE WAS SOME CONFLICT IN THE EVIDENCE THERE WAS SUBSTANTIAL AGREEMENT BETWEEN THE PARTIES CONCERNING THE EVENTS WITH WHICH WE ARE HERE CONCERNED AND THE EVIDENCE ACCEPTED BY THE BOARD IS SET OUT BELOW.
7. ON DECEMBER 7TH, 1966, MR. GALLAGHER, THE APPLICANT'S GENERAL FOREMAN, INSTRUCTED MR. SWEENEY, A FOREMAN IN CHARGE OF A CREW OF ABOUT A DOZEN IRONWORKERS, TO HAVE TWO CABLES REMOVED FROM INSIDE A REACTOR TO FACILITATE A CONCRETE POUR WHICH WAS SCHEDULED TO TAKE PLACE LATER THAT DAY. MR. SWEENEY PASSED THE INSTRUCTIONS TO MR. McRAE, ONE OF THE RESPONDENTS, WHO WAS THE PUSHER ON MR. SWEENEY'S CREW. MR. McRAE IN TURN REQUESTED TWO OF THE RESPONDENTS, MR. CORBETT AND MR. ROMANO, TO RELEASE THE CABLES WHICH WERE LOCATED APPROXIMATELY THIRTY-THREE FEET ABOVE THE TEMPORARY FLOOR LEVEL INSIDE THE REACTOR. THESE CABLES HAD TO BE REACHED BY CLIMBING A TEMPORARY SHORING WHICH SUPPORTED THE DOME OF THE REACTOR.



THIS SHORING WAS CONSTRUCTED OF 1½" PAINTED TUBULAR STEEL. THE CROSS MEMBERS OF THE SHORING WERE APPROXIMATELY TWO FEET APART. AT THE TIME THE REQUEST WAS MADE OF MR. CORBETT AND MR. ROMANO IT WAS RAINING AND THE STEEL SHORING WAS WET. MR. CORBETT AND MR. ROMANO ADVISED MR. McRAE THAT THEY WOULD NOT CLIMB THE STEEL SHORING BECAUSE OF THE RAIN BUT WOULD REMAIN AT WORK FOR THE TWO HOURS NECESSARY TO COLLECT THEIR "SHOW UP" TIME PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT AFTER WHICH PERIOD THEY WOULD GO HOME. MR. CORBETT AND MR. ROMANO REMAINED AT WORK FOR THE TWO HOURS IN ORDER TO COLLECT THEIR "SHOW UP" PAY AND LEFT WORK AFTER THAT TIME WITHOUT COMMENT OR CRITICISM BY ANY PERSON IN MANAGEMENT.

8. SUBSEQUENTLY, AT APPROXIMATELY NOON HOUR, MR. TURNER AND MR. HEBERT, TWO OF THE RESPONDENTS WHO HAD JUST COMPLETED OTHER WORK, WERE REQUESTED BY MR. SWEENEY TO RELEASE THE CABLES IN QUESTION.

MR. TURNER PROCEEDED TO THE TEMPORARY FLOOR BENEATH THE STEEL SHORING AND WAS MET THERE BY MR. SWEENEY WHO POINTED OUT THE CABLES WHICH HAD TO BE RELEASED. MR. HEBERT WAS NOT PRESENT AT THAT TIME, MR. SWEENEY DIRECTED MR. TURNER TO GET A WRENCH FROM THE TOOL CRIB IN ORDER TO PERFORM THE JOB. MR. SWEENEY TESTIFIED THAT MR. TURNER COULD HAVE OBTAINED A SAFETY BELT AT THE TOOL CRIB AT THE SAME TIME THAT HE PICKED UP THE WRENCH TO PERFORM THE WORK.

9. AFTER INSTRUCTING MR. TURNER TO GET A WRENCH MR. SWEENEY LEFT THE AREA TO LOOK FOR MR. HEBERT. UNABLE TO LOCATE MR. HEBERT, MR. SWEENEY RETURNED TO THE TEMPORARY FLOOR BENEATH THE STEEL SHORING AND OBSERVED MR. TURNER CLIMBING PART WAY UP THE SHORING. MR. SWEENEY ASKED MR. TURNER WHERE HIS FRIEND WAS (REFERRING TO HEBERT) AND MR. TURNER SIMPLY STATED THAT "IT IS WET UP HERE". AT THAT MR. SWEENEY TOLD MR. TURNER TO COME BACK DOWN. THE REASONS MR. SWEENEY GAVE FOR TELLING MR. TURNER TO COME DOWN WERE THREEFOLD. MR. SWEENEY SAID THAT HE ASKED HIM TO COME DOWN BECAUSE MR. HEBERT WAS NOT THERE, BECAUSE HE NOTED THAT MR. TURNER DID NOT HAVE A SAFETY BELT ON AND BECAUSE TURNER HAD COMPLAINED OF THE WET CONDITION OF THE STEEL TOWER.

10. AS MR. TURNER WAS RETURNING TO THE TEMPORARY FLOOR, MR. WINKLER, AN IRONWORKER STEWARD, HAVING BEEN INFORMED OF MR. SWEENEY'S REQUEST BY MR. HEBERT, CLIMBED ON TO THE TEMPORARY FLOOR AND ACCOSTED MR. SWEENEY. MR. WINKLER CRITICIZED MR. SWEENEY FOR SENDING A MAN UP THE TOWER WHEN IT WAS WET AND HIS CRITICISM TOOK THE FORM OF ABUSIVE AND FOUL LANGUAGE. MR. SWEENEY REFUSED TO ENGAGE IN A DISCUSSION WITH MR. WINKLER BECAUSE OF THE IMPERATE LANGUAGE HE WAS USING AND HE CLIMBED DOWN FROM THE TEMPORARY FLOOR. MR. WINKLER FOLLOWED MR. SWEENEY AND STOPPED HIM OUTSIDE OF THE DISPATCHER SHACK LOCATED AT THE SITE. MR. WINKLER'S LANGUAGE BECAME ABUSIVE TO THE POINT OF INTIMIDATION.

11. MR. SWEENEY REPORTED MR. WINKLER'S CONDUCT TO MR. GALLAGHER WHO IN TURN DISCUSSED THE MATTER WITH MR. SIMPSON, THE MECHANICAL SERVICES SUPERINTENDENT AT THE PICKERING PROJECT. MR. SWEENEY, MR. SIMPSON AND MR. GALLAGHER ATTENDED AT THE STEEL SHORING TO VIEW WHERE THE WORK WAS TO HAVE TAKEN PLACE AND THEN MR. SIMPSON SUMMONED MR. WINKLER TO HIS OFFICE WHERE, AFTER HEARING MR. WINKLER'S COMPLAINT ABOUT SENDING MEN UP ON WET SHORING, CONFRONTED MR. WINKLER WITH THE ACCUSATION THAT HE HAD USED VERY ABUSIVE LANGUAGE ON MR. SWEENEY. MR. WINKLER DID NOT DENY THE USE OF THE LANGUAGE AND THERE WAS NO SUGGESTION AT THAT TIME THAT MR. SWEENEY HIMSELF HAD USED SIMILAR LANGUAGE. MR. SIMPSON REMINDED MR. WINKLER THAT HE HAD BEEN CAUTIONED ABOUT THE USE OF ABUSIVE LANGUAGE TO A FOREMAN ON A PREVIOUS OCCASION. APPARENTLY, AT THAT TIME, MR. WINKLER

HAD USED VERY ABUSIVE AND OBJECTIONABLE LANGUAGE TO A FOREMAN AND WHEN HE WAS REPRIMANDED HE TERMINATED HIS EMPLOYMENT WITH THE APPLICANT. HOWEVER, THE FOLLOWING DAY, AS A RESULT OF REPRESENTATIONS MADE BY THE BUSINESS AGENT OF LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, THE APPLICANT AGREED TO REHIRE MR. WINKLER ON CONDITION THAT HE APOLOGIZED TO THE FOREMAN IN QUESTION AND AGREED TO CONTROL HIMSELF IN THE FUTURE. HAVING BROUGHT THE EARLIER COMPLAINT TO MR. WINKLER'S ATTENTION, MR. SIMPSON THEN ADVISED MR. WINKLER THAT HE WAS SUSPENDED FOR USING ABUSIVE LANGUAGE TO A FOREMAN FOR THE BALANCE OF THAT WEEK, A PERIOD OF APPROXIMATELY TWO DAYS AND TWO HOURS. MR. WINKLER ANGRILY STATED THAT HE WAS NOT A CHILD IN KINDERGARTEN AND REFUSED TO BE SLAPPED ON THE WRIST AND THAT HE WAS FIRED AND WOULD "PULL THE PIN". MR. SIMPSON AGAIN ADVISED HIM HE WAS NOT DISCHARGED BUT MERELY SUSPENDED. MR. WINKLER ADVISED MR. SIMPSON THAT THE MEN COULD NOT WORK WITHOUT A STEWARD. MR. SIMPSON SUGGESTED TO MR. WINKLER THAT HE HOLD A MEETING WITH THE IRONWORKERS IN ORDER TO ELECT OR APPOINT A NEW STEWARD TO COVER THE TERM OF SUSPENSION.

12. A MEETING WAS CONVENED IN THE LUNCH ROOM AT THE SITE, AT WHICH ALL THE IRONWORKERS ON SHIFT WERE PRESENT. WHILE THERE IS SOME CONFLICT IN THE EVIDENCE AS TO WHAT TRANSPIRED AT THIS MEETING IT IS COMMON GROUND THAT MR. WINKLER ADVISED THE MEN OF HIS SUSPENSION FOR USING ABUSIVE LANGUAGE AND FURTHER ADVISED THE MEN THAT THEY COULD NOT WORK WITHOUT A STEWARD ON THE JOB AND THAT THE UNION CONSTITUTION PROVIDED FOR A \$50.00 FINE AGAINST AN IRONWORKER WHO DID SO. WHEN THE MEN WERE ADVISED OF THIS MR. YETMAN, ONE OF THE RESPONDENTS WHO WAS AN ASSISTANT STEWARD, RESIGNED HIS POSITION AS ASSISTANT STEWARD. NO OTHER PERSON VOLUNTEERED TO ASSUME THE POSITION OF STEWARD. MR. WINKLER SUBSEQUENTLY ADVISED MR. SIMPSON THAT NO ONE WOULD AGREE TO ACT AS STEWARD. NONE OF THE MEN RETURNED TO WORK THAT DAY AND THEY LEFT THE PREMISES AT THE NORMAL QUITTING TIME AT 4:30 P.M.

13. THE AFTERNOON AND NIGHT SHIFTS BOTH REPORTED FOR AND PERFORMED THEIR USUAL DUTIES. THE FOLLOWING DAY DECEMBER 8TH A MEETING WAS CONVENED IN MR. SIMPSON'S OFFICE AT APPROXIMATELY 8:30 A.M. AND WAS ATTENDED BY MR. WINKLER, MR. TAYLOR, A BUSINESS AGENT OF LOCAL 721, AND MR. HERMESTON, THE GENERAL SUPERINTENDENT AT THE PROJECT. WHILE ALL THE IRONWORKERS REPORTED FOR WORK THAT DAY NO ONE IN FACT DID ANY WORK. THE OTHER TRADES ON THE JOB CONTINUED TO WORK. WHEN MR. TAYLOR WAS ADVISED OF THE LANGUAGE USED BY MR. WINKLER HE AGREED THAT IT WAS "VERY STRONG INDEED". MR. TAYLOR PLEADED FOR TIME TO STRAIGHTEN OUT THE MATTER WITHIN THE UNION. MR. TAYLOR ASKED THE APPLICANT TO RESCIND THE SUSPENSION AND PERMIT THE UNION TO SETTLE THE MATTER SINCE BOTH MR. WINKLER AND MR. SWEENEY WERE MEMBERS OF THE IRONWORKERS UNION. IN THE CONSTRUCTION INDUSTRY FOREMEN USUALLY MAINTAIN THEIR UNION MEMBERSHIP BECAUSE THEIR NEXT JOB MAY BE WITH A DIFFERENT EMPLOYER AND MAY NOT BE THAT OF FOREMAN. MANY OF THE RESPONDENTS IN THIS CASE HAVE ACTED AS FOREMEN ON OTHER JOBS. MR. HERMESTON ADVISED MR. TAYLOR THAT IT WAS IMPOSSIBLE TO REVOKE THE SUSPENSION.

14. Mr. TAYLOR THEN ASKED Mr. WINKLER TO LEAVE Mr. SIMPSON'S OFFICE IN ORDER THAT HE COULD HAVE A PRIVATE DISCUSSION. Mr. TAYLOR APPARENTLY TOLD Mr. HERMESTON AND Mr. SIMPSON THAT THE UNION WAS TRYING TO UPGRADE THE CALIBRE OF ITS STEWARDS AND INDICATED THAT HE DID NOT SYMPATHIZE WITH Mr. WINKLER'S POSITION. HOWEVER, IN ORDER TO GET THE MEN BACK TO WORK HE ASKED THAT THE SUSPENSION BE RESCINDED BECAUSE HE HAD TO HAVE SOMETHING TO TAKE BACK TO THE MEN.

15. Mr. McLELLAN, THE APPLICANT'S PERSONNEL OFFICER IN CHARGE OF THE PROJECT, SPOKE TO Mr. MACISAAC, THE BUSINESS MANAGER OF LOCAL 721, ON THE TELEPHONE ON DECEMBER 8TH AT WHICH TIME Mr. MACISAAC INFORMED Mr. McLELLAN THAT HE WAS AWARE OF THE SITUATION. HE INDICATED THAT HE KNEW BOTH Mr. SWEENEY AND Mr. WINKLER AND THAT THERE WAS NO QUESTION IN HIS MIND THAT THE APPLICANT HAD DONE THE RIGHT THING WITH RESPECT TO Mr. WINKLER. HOWEVER, HE FURTHER ADVISED THAT THE ONLY WAY THE MEN WOULD RETURN TO WORK WOULD BE FOR THE APPLICANT TO SUSPEND Mr. SWEENEY FOR AN EQUIVALENT PERIOD OF TIME THAT WINKLER WAS SUSPENDED.

16. AT THE HEARING Mr. WINKLER TESTIFIED THAT IT WAS DECIDED BY THE IRONWORKERS AT THE MEETING WHICH FOLLOWED HIS SUSPENSION ON DECEMBER 7TH, THAT THEY WOULD NOT RETURN TO WORK UNTIL IT WAS ESTABLISHED THAT THERE WAS A RECOGNIZED STEWARD OF THE IRONWORKERS ON THE JOB AND THIS WAS THE TOTAL DECISION AT THAT TIME. Mr. TURNER TESTIFIED THAT HE WAS PREPARED TO CONTINUE TO WORK ON DECEMBER 7TH UNTIL HE LEARNED OF Mr. WINKLER'S SUSPENSION. HE STATED THAT IT WAS "THE FEELING OF THE MEETING THAT THE DISPUTE BETWEEN SWEENEY AND WINKLER SHOULD BE HANDLED BY THE UNION".

17. THE RESPONDENTS WHO WORKED ON THE DAY SHIFT ON DECEMBER 7TH STOPPED WORK DURING THE AFTERNOON OF DECEMBER 7TH AND PERFORMED NO FURTHER WORK ALTHOUGH WORK WAS AVAILABLE UNTIL THURSDAY, DECEMBER 15TH WHEN THEY RETURNED TO WORK IN THE AFTERNOON AFTER THE LUNCH HOUR. THEY WORKED AGAIN ON FRIDAY, DECEMBER 16TH, 1966 UNTIL APPROXIMATELY 10:30 A.M. THE RESPONDENTS WHO WERE EMPLOYED ON THE AFTERNOON SHIFT DID NOT WORK ON DECEMBER 8TH, 1966 AND DID NOT RETURN TO WORK UNTIL THE AFTERNOON OF DECEMBER 15TH, 1966 WHEN THEY WORKED ONE SHIFT BUT HAVE NOT WORKED SINCE THAT TIME ALTHOUGH WORK WAS AVAILABLE. THE RESPONDENTS WHO WERE EMPLOYED ON THE NIGHT SHIFT WORKED ON THE NIGHT SHIFT COMMENCING AT MIDNIGHT FRIDAY, DECEMBER 8TH, 1966 BUT HAVE NOT WORKED ON ANY SHIFT SINCE THAT TIME UNTIL THE SHIFT COMMENCING AT MIDNIGHT FRIDAY, DECEMBER 16TH, 1966 AT WHICH TIME THEY WORKED ONE SHIFT BUT HAVE NOT WORKED SINCE THEN ALTHOUGH WORK WAS AVAILABLE.

18. Mr. WINKLER HAD BEEN APPOINTED THE "SAFETY CAPTAIN" BY THE UNION SOME TIME IN AUGUST 1966. HOWEVER, WHILE HE IN FACT BROUGHT MATTERS CONCERNING SAFETY TO THE ATTENTION OF THE APPLICANT FROM TIME TO TIME AND SUCH MATTERS WERE DEALT WITH BY THE APPLICANT, THERE WAS NO FORMAL RECOGNITION BY THE APPLICANT OF HIS POSITION AS "SAFETY CAPTAIN", THERE BEING NO PROVISION FOR SUCH A POSITION UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. THERE WAS NO EVIDENCE THAT Mr. WINKLER HAD ANY SPECIAL TRAINING WHICH WOULD QUALIFY HIM AS AN EXPERT IN MATTERS PERTAINING TO SAFETY.

19. THE RESPONDENTS TOOK THE POSITION AT THE HEARING IN THIS MATTER THAT THEY WERE JUSTIFIED IN THEIR REFUSAL TO WORK BECAUSE OF POOR SAFETY CONDITIONS AT THE PICKERING PROJECT AND IN PARTICULAR BECAUSE OF THE FACT THAT THEY ALLEGED THAT MR. SWEENEY THROUGH LACK OF EXPERIENCE, KNOWLEDGE AND UNDERSTANDING CREATED AN ADDITIONAL SAFETY HAZARD.

20. THE RESPONDENTS CALLED A NUMBER OF WITNESSES WHO TESTIFIED CONCERNING SAFETY ASPECTS AT THE APPLICANT'S PICKERING PROJECT AND WHO WERE CRITICAL OF MR. SWEENEY. THE RESPONDENTS ALSO CALLED MR. STANDING, AN EMPLOYEE OF THE CONSTRUCTION SAFETY ASSOCIATION, WHO AS AN EDUCATOR IN THAT ASSOCIATION QUALIFIES AS AN INDEPENDENT SAFETY EXPERT. HOWEVER, IT IS INTERESTING TO NOTE THAT WHILE HE WAS ASKED WHAT HE CONSIDERED TO BE THE PREFERRED PRACTICE BETWEEN CERTAIN PRACTICES EMPLOYED ON THE HYDRO PROJECT AS COMPARED WITH OTHER ALTERNATE PRACTICES, AND WHILE HE EXPRESSED AN OPINION FAVOURABLE TO THE ALTERNATE PRACTICE, THE RESPONDENT'S COUNSEL AT NO TIME PUT A DIRECT QUESTION TO HIM WHICH WOULD REQUIRE AN OPINION AS TO WHETHER OR NOT ANY PRACTICES, PROCEDURES, EQUIPMENT OR CONDITIONS AT THE PICKERING PROJECT SHOULD, IN THE OPINION OF THE WITNESS, BE CONDEMNED AS UNSAFE. HIS EVIDENCE CAN BEST BE DESCRIBED AS EQUIVOCAL AND WE CAN ONLY ASSUME THAT HE DID NOT SPECIFICALLY CRITICIZE ANY PRACTICES, PROCEDURES, CONDITIONS OR EQUIPMENT, WHICH HE SAW AT THE SITE DURING THE INSPECTION VISIT HE MADE, BECAUSE HE SAW NOTHING TO CRITICIZE.

21. THE REST OF THE EVIDENCE CALLED BY THE RESPONDENTS CONCERNING MATTERS OF SAFETY AT BEST IS SELF-SERVING AND SUBJECTIVE. HOWEVER, RATHER THAN ESTABLISH THAT THE RESPONDENTS IN FACT WERE FEARFUL OF THEIR SAFETY, THE EVIDENCE CALLED BY THE RESPONDENTS, WHEN VIEWED AS A WHOLE, SERVES TO ESTABLISH THAT THE APPLICANT IN FACT TOOK ALL REASONABLE PRECAUTIONS TO ENSURE SAFETY. WHILE UNDOUBTEDLY A PROJECT OF THIS NATURE IS HAZARDOUS AND WHILE THE BOARD IS FULLY AWARE OF THE RISK INVOLVED WHEN IRONWORKERS ARE REQUIRED TO WORK ON STRUCTURES WHICH ARE IN THE PROCESS OF BEING BUILT, THERE WAS ABSOLUTELY NOTHING IN THE EVIDENCE CONCERNING THE MANNER IN WHICH THIS PROJECT WAS BEING ERECTED OR IN THE EQUIPMENT USED BY THE APPLICANT WHICH WOULD CAUSE UNNECESSARY DANGER TO THE EMPLOYEES. ON THE CONTRARY, THE APPLICANT USED EVERY MEANS AT ITS DISPOSAL NOT ONLY TO CORRECT DANGEROUS SITUATIONS WHICH BECAME APPARENT, BUT TOOK STEPS TO REMOVE ANY CONCERN OF THE EMPLOYEES ABOUT SITUATIONS WITH WHICH THE EMPLOYEES WERE NOT FAMILIAR, WHICH WHILE SAFE IN THEMSELVES, WERE A SOURCE OF CONCERN TO EMPLOYEES. ALSO ALL PARTIES AGREED THAT BECAUSE OF THE HAZARDOUS NATURE OF THE IRONWORKERS TRADE, THE INDIVIDUAL IRONWORKER COULD AND DID REFUSE TO DO ANY WORK WHICH HE CONSIDERED UNDULY HAZARDOUS. ALTERNATE WORK WAS ALWAYS OFFERED WHEN AVAILABLE. IN THE INSTANT CASE MR. TURNER WAS OFFERED AND PERFORMED OTHER WORK WHEN HE CAME DOWN FROM THE SHORING TOWER.

22. IT IS NOT WITHOUT INTEREST TO NOTE THAT, EXCEPT FOR ONE DAY, A WEEK AFTER THE STOPPAGE COMMENCED, WHEN THE IRONWORKERS PICKETED THE PROJECT AND CARRIED PLACARDS CONDEMNING THE SAFETY OF THE JOB, ALL THE OTHER TRADES CONTINUED TO WORK UNTIL SUCH TIME AS THEY WERE LAID OFF BY THE APPLICANT BECAUSE THEIR PORTION OF THE WORK COULD NOT PROCEED UNTIL



THE IRONWORKERS WERE BACK ON THE JOB. THE OTHER TRADES IN QUESTION WERE REQUIRED TO WORK ON THE SAME SCAFFOLDS AND IN AND AROUND THE SAME EQUIPMENT ABOUT WHICH THE IRONWORKERS NOW COMPLAINED, BUT THESE OTHER TRADES REFUSED TO SUPPORT THE IRONWORKERS IN THEIR COMPLAINT. IT WOULD BE UNREASONABLE TO ASSUME THAT THE IRONWORKERS WHO COMPRISED ABOUT TWELVE PER CENTUM OF THE TOTAL NUMBER OF EMPLOYEES ON THE JOB ARE THE ONLY EMPLOYEES WHO ARE SUFFICIENTLY SAFETY CONSCIOUS THAT THEY ARE THE ONLY ONES WHO CAN RECOGNIZE UNSAFE CONDITIONS. THE FACT THAT THE ISSUE OF SAFETY WAS RAISED BY THE RESPONDENTS WITH THE APPLICANT FOR THE FIRST TIME ONE WEEK AFTER THE STOPPAGE COMMENCED, IS IN ITSELF INDICATIVE OF THE IMPORTANCE THEY ATTACHED TO THEIR COMPLAINTS.

23. WITH RESPECT TO THE ALLEGATION THAT MR. SWEENEY CREATED AN ADDITIONAL SAFETY HAZARD, THE BOARD WITHOUT HESITATION FINDS THAT THERE WAS NOT A TITTLE OF EVIDENCE TO SUBSTANTIATE THIS ALLEGATION. WHILE MR. WINKLER CASTIGATED MR. SWEENEY FOR ASKING MR. TURNER TO CLIMB THE WET STEEL SHORING AND WAS CRITICIZED FOR HIS INEXPERIENCE WHICH WAS EXHIBITED BY THE MAKING OF SUCH A REQUEST, MR. TURNER WHO HAS HAD TWENTY YEARS' EXPERIENCE AS AN IRONWORKER PROCEEDED TO CLIMB THE STEEL WORK WITHOUT A SAFETY BELT EVEN THOUGH ONE COULD HAVE BEEN READILY OBTAINED BY HIM AT THE SAME TIME HE PICKED UP THE WRENCH. MR. SWEENEY WAS NOT PRESENT WHEN MR. TURNER COMMENCED HIS CLIMB AND IF ANYONE CAN BE CRITICIZED CONCERNING THAT EVENT, IT MUST BE MR. TURNER WHO UNDERTOOK TO MAKE A CLIMB WITHOUT WEARING A SAFETY BELT SO THAT HE COULD "TIE HIMSELF OFF" WHEN HE HAD REACHED THE LEVEL WHERE THE WORK WAS TO BE PERFORMED.

24. IF THE RESPONDENTS SOLE CONCERN IS THE FACT THAT THEY WOULD NOT WORK WITHOUT A STEWARD ON THE JOB WHO COULD ACT AS SAFETY CAPTAIN THERE WAS NOTHING TO PREVENT MR. YETMAN THE ASSISTANT STEWARD, FROM ASSUMING THIS POSITION. FOR THAT MATTER, ALMOST ANY OF THE RESPONDENTS COULD HAVE ASSUMED THE POSITION, ESPECIALLY THOSE WHO TESTIFIED CONCERNING THEIR LONG EXPERIENCE AS IRONWORKERS. MOST OF THE IRONWORKERS HAD IN EXCESS OF TEN YEARS' EXPERIENCE. TO FIND OTHERWISE WOULD BE TO PERMIT THE RESPONDENT TO REFUSE TO ACT AS A UNION STEWARD AND THEREBY BENEFIT BY THEIR OWN REFUSAL TO ACT. IN ADDITION, WHEN MR. WINKLER QUIT THE JOB ON THE OCCASION PREVIOUSLY REFERRED TO, THERE WAS NO WORK STOPPAGE AND NO SUGGESTION THE MEN COULD NOT WORK WITHOUT WINKLER ACTING AS SAFETY CAPTAIN.

25. IT IS READILY APPARENT FROM HIS OWN EVIDENCE THAT MR. WINKLER PRECIPITATED THE VICIOUS ARGUMENT WITH MR. SWEENEY WHEN THERE WAS NO NECESSITY FOR AN ARGUMENT AT ALL. NO ONE WAS CLIMBING THE TOWER WHEN THE ARGUMENT TOOK PLACE. HAD MR. WINKLER (WHO WAS REFERRED TO BY HIS COUNSEL AS "HOT TEMPERED WINKLER") WISHED TO PREVENT ANYONE FROM CLIMBING THIS TOWER BECAUSE OF SAFETY REASONS, HE COULD HAVE DISCUSSED THE MATTER WITH MR. GALLAGHER OR MR. MCINTOSH, THE APPLICANT'S ACCIDENT PREVENTION OFFICER ON THE JOB. WHEN MR. WINKLER WAS SUSPENDED HE WAS DETERMINED THAT NO OTHER IRONWORKER WOULD WORK UNLESS HIS SUSPENSION WAS LIFTED. IF THE FACTS WERE OTHERWISE, THERE WAS NOTHING TO PREVENT THE RESPONDENTS FROM RETURNING TO WORK ONCE THE TIME OF MR. WINKLER'S SUSPENSION HAD ELAPSED.

QUITE OBVIOUSLY, THE RESPONDENTS WERE NOT SERIOUS ABOUT THEIR COMPLAINTS ABOUT SAFETY HAZARDS ON THE JOB BECAUSE THEY RETURNED TO WORK ON DECEMBER 15TH AND 16TH AND REMAINED AT WORK UNTIL THEY SAW MR. SWEENEY ON THE JOB WHEREUPON THEY AGAIN WALKED OUT.

26. FROM ALL THE EVIDENCE CALLED BY THE RESPONDENTS WE COULD ARRIVE AT NO OTHER CONCLUSION THAN THAT THIS WORK STOPPAGE WAS PRECIPITATED BY MR. WINKLER. FURTHER, HIS ANGER WITH HIS SUSPENSION DEVELOPED INTO A PERSONAL VENDETTA AGAINST MR. SWEENEY. HOWEVER, IF SWEENEY WAS THE ONLY ISSUE, THERE WOULD BE NO NEED FOR A GENERAL WORK STOPPAGE SINCE HE WAS ONLY IN CHARGE OF ABOUT A DOZEN IRONWORKERS OUT OF A TOTAL WHICH EXCEEDED EIGHTY ON THREE SHIFTS. THE SAFETY MATTERS ABOUT WHICH TESTIMONY WAS DIRECTED AT THE HEARING CONCERNED ISOLATED EVENTS DATING BACK TO THE LATE SUMMER OF 1966 AND WERE OBVIOUSLY ERECTED OUT OF THE MEMORIES OF THE RESPONDENTS FOR THE PURPOSE OF CREATING AN ATMOSPHERE WHICH THEY HOPED WOULD CONFUSE THE REAL ISSUE CONCERNING THE CAUSE OF THE WORK STOPPAGE. IT IS AGAIN NOT WITHOUT INTEREST THAT NO COMPLAINTS WERE MADE BY THE IRONWORKERS TO THE SAFETY INSPECTOR OF THE DEPARTMENT OF LABOUR WHO REGULARLY INSPECTED THIS PROJECT AND WAS KNOWN TO MR. WINKLER AND MOST OF THE RESPONDENTS. NO GRIEVANCES WERE FILED BY THE UNION ON BEHALF OF ANY IRONWORKER WHO REFUSED TO DO WHAT HE CONSIDERED TO BE AN UNSAFE JOB BECAUSE NO DISCIPLINARY ACTION WAS TAKEN IF AN IRONWORKER REFUSED TO OBEY AN ORDER ON THE GROUNDS OF SAFETY.

27. IN ORDER TO DETERMINE WHETHER OR NOT THE RESPONDENTS HAVE PROVED THAT THEIR WORK STOPPAGE WAS JUSTIFIED IN THIS CASE, AS IT IS INCUMBENT UPON THEM TO DO, THE EVIDENCE MUST SATISFY THE BOARD THAT THE MOTIVATING CAUSE OF THE WORK STOPPAGE WAS A REAL BELIEF SINCERELY HELD BY THE RESPONDENTS THAT THERE WAS A REASONABLE LIKELIHOOD THAT TO CONTINUE TO WORK WOULD SERIOUSLY ENDANGER THEIR PHYSICAL WELFARE. TO MAKE THIS DETERMINATION THE BOARD MUST LOOK AT CONDITIONS ON THE JOB TO DETERMINE WHETHER OR NOT THERE WAS ANYTHING WHICH COULD CREATE A REASONABLE APPREHENSION OF DANGER. WHILE IT IS RECOGNIZED THAT AN IRONWORKER'S WORK BY ITS VERY NATURE IS MORE HAZARDOUS THAN THE WORK PERFORMED BY MANY OTHER TRADES OR JOB CLASSIFICATIONS SUCH AS FOR EXAMPLE, THE WORK PERFORMED BY A CLERK IN AN OFFICE OR A LITHOGRAPHER IN A PRINTING PLANT, NEVERTHELESS, THE BOARD MUST DETERMINE WHETHER OR NOT THE CONDITIONS UNDER WHICH THE IRONWORKERS WERE ASKED TO WORK, CREATED AN UNUSUAL AND UNNECESSARY HAZARD AND IT WOULD BE UNREASONABLE TO EXPECT AN ORDINARY IRONWORKER TO PERFORM SUCH WORK.

28. THE BOARD MUST ALWAYS RELY ON THE EVIDENCE BEFORE IT AND IN PARTICULAR IN CASES SUCH AS THIS WHERE THE MATTER IS A HIGHLY TECHNICAL ONE, THE EVIDENCE OF INDEPENDENT EXPERTS MUST BE PREFERRED OVER THE SUBJECTIVE OPINION OF THE PARTIES. THE APPLICANT CALLED A GREAT DEAL OF EVIDENCE CONCERNING THE SAFETY OF THE PROJECT INCLUDING THE INDEPENDENT EXPERT EVIDENCE OF MR. CARTER, THE SAFETY INSPECTOR OF ONTARIO COUNTY, WHO REGULARLY VISITED THE PROJECT. THIS EVIDENCE CONFIRMS THE FINDINGS WHICH WE HAVE MADE ABOVE (BASED ON THE RESPONDENTS OWN EVIDENCE) AND ESTABLISHES THAT CONSIDERING THE NATURE AND SIZE OF THIS PROJECT IT

HAS AN EXCELLENT SAFETY RECORD. NO FORMAL ORDERS WERE MADE UNDER THE CONSTRUCTION SAFETY ACT BY THE SAFETY INSPECTOR. THE SAFETY INSPECTOR STATED THAT HE RECEIVED THE UTMOST COOPERATION WITH RESPECT TO SAFETY MATTERS AND IMMEDIATE COMPLIANCE WITH ANY SUGGESTION HE HAD TO MAKE. IT WAS MR. CARTER'S OPINION THAT IT WAS NOT AN UNREASONABLE OR UNSAFE REQUEST TO ASK AN IRONWORKER RIGGER, WHO BY TRADE IS AN EXPERIENCED CLIMBER, TO CLIMB THE WET STEEL SHORING IN QUESTION TO A HEIGHT OF APPROXIMATELY THIRTY FEET TO PERFORM WHAT WAS A RELATIVELY SHORT JOB IN THE CIRCUMSTANCES WITH WHICH WE ARE HERE CONCERNED, PROVIDED THAT THE IRONWORKER RIGGER RETAINED HIS RIGHT TO REFUSE THE WORK AS WAS THE SITUATION IN THIS CASE. THIS EVIDENCE THE BOARD ACCEPTS.

29. THE APPLICANT HAD A FULL-TIME ACCIDENT PREVENTION OFFICER ON THE JOB WHO ALSO HAD A FULL-TIME ASSISTANT. THE ACCIDENT PREVENTION OFFICER WAS WELL QUALIFIED AND DIRECTED A COMPREHENSIVE SAFETY PROGRAM WHICH WAS DESIGNED TO CAUSE THE EMPLOYEES TO BE EXTREMELY SAFETY CONSCIOUS AND TO ENCOURAGE THE EMPLOYEES TO ACTIVELY PARTICIPATE IN THE APPLICANT'S SAFETY PROGRAM. THE APPLICANT CONDUCTED REGULAR WEEKLY SAFETY MEETINGS OF ALL THE EMPLOYEES, IN SMALL GROUPS, WHERE SAFETY ASPECTS WERE DISCUSSED AND COMPLAINTS AND SUGGESTIONS WERE ENCOURAGED. BEFORE ANY UNUSUAL JOB WAS UNDERTAKEN THERE WAS PRIOR CONSULTATION WITH THE SAFETY INSPECTORS OF THE DEPARTMENT OF LABOUR AND PRIOR APPROVAL WAS OBTAINED. THE APPLICANT ALSO HAD A PROGRAM WHICH ENCOURAGED EMPLOYEES TO VOLUNTEER AS "SAFETY MONITORS". THE SAFETY MONITORS, AS PART OF THEIR REGULAR DUTIES, WERE TO BE PARTICULARLY CONSCIOUS OF ANY UNSAFE PRACTICES OR CONDITIONS WHICH SHOULD BE BROUGHT TO THE ATTENTION OF THE ACCIDENT PREVENTION OFFICER. ALTHOUGH THE IRONWORKERS HAD BEEN ENCOURAGED TO VOLUNTEER TO ACT AS SAFETY MONITORS, THERE WERE NO IRONWORKERS ACTING AS SAFETY MONITORS AT THE TIME OF THE WORK STOPPAGE. MR. WINKLER HAD BEEN SPECIFICALLY APPROACHED IN THIS RESPECT BUT HE FAILED TO TAKE ADVANTAGE OF THE OFFER.

30. IN ADDITION TO THE SAFETY PROGRAM OUTLINED ABOVE, THE APPLICANT WAS CONTINUALLY INNOVATING NEW PROCEDURES WHICH WOULD DECREASE THE HAZARDS INVOLVED IN BUILDING A LARGE COMPLICATED STRUCTURE SUCH AS THIS. THE APPLICANT APPARENTLY HAS A VERY FAVOURABLE WORKMEN'S COMPENSATION RATE WHICH IS INDICATIVE OF GOOD SAFETY PRACTICES.

31. IN ARGUMENT, THE RESPONDENTS RELIED UPON THE NATIONAL REFRACTORIES LIMITED CASE 63 C.L.L.C. 1149 ¶16,276, WHEREIN THE BOARD STATED THAT A STRIKE DECLARATION IS NOT INTENDED TO BE A PUNITIVE REMEDY BUT IS PRIMARILY AN INSTRUMENT TO AID IN THE SETTLEMENT OF LABOUR DISPUTES AND SERVES THE AUXILIARY PURPOSE OF INFORMING EMPLOYERS, TRADE UNIONS, EMPLOYEES AND THE PUBLIC AT LARGE THAT STRIKE ACTION IN A PARTICULAR INSTANCE IS UNLAWFUL. IN ADDITION A DECLARATION ACTS AS A GUIDE TO THE PARTIES CONCERNED WITH RESPECT TO THEIR FUTURE CONDUCT. THE RESPONDENTS ALSO RELIED UPON THE ARVO TUOMI CASE 53 C.L.L.C. 1445 ¶17,052, WHICH WAS A DECISION OF THE BOARD IN MAY 1953 WHICH INDICATED THAT "THE ISSUANCE OF A DECLARATION IS AN EXTRAORDINARY REMEDY AND THAT THE DECLARATION SHOULD BE MADE ONLY WHERE THERE IS NO EQUALLY CONVENIENT, BENEFICIAL AND EFFECTUAL REMEDY AVAILABLE TO THE APPLICANT".

THE RESPONDENTS ARGUED THAT BECAUSE THE APPLICANT IN THE INSTANT CASE IS ALSO SEEKING, IN OTHER APPLICATIONS, CONSENT TO PROSECUTE THE PRESENT RESPONDENTS AND IS RELYING ON THE SAME FACTS IN SUPPORT OF ITS APPLICATION FOR CONSENT TO PROSECUTE, ACCORDINGLY, PURSUANT TO THE PRINCIPLE SET FORTH IN THE ARVO TUOMI CASE THE BOARD SHOULD REFUSE TO MAKE THE DECLARATION REQUESTED IN THIS CASE BECAUSE THE APPLICANT HAS SOUGHT AN EFFECTUAL REMEDY IN ANOTHER APPLICATION.

32. THE BOARD POINTED OUT TO THE RESPONDENTS AT THE HEARING THAT WHILE THE PRINCIPLE ENUNCIATED BY THE BOARD IN THE ARVO TUOMI CASE WAS THE PRINCIPLE WHICH GUIDED THE BOARD'S DISCRETION IN ISSUING STRIKE DECLARATIONS IN 1953, THIS HAS NOT BEEN THE PRACTICE OF THE BOARD SINCE THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE WERE AMENDED IN 1954 TO PROVIDE FOR THE EXPEDITIOUS HANDLING OF STRIKE DECLARATION APPLICATIONS. GENERALLY SPEAKING, THE ONLY TIME THE BOARD WOULD REFUSE TO MAKE A DECLARATION AT THE PRESENT TIME IS WHERE THE EMPLOYEES HAVE RETURNED TO WORK PRIOR TO THE HEARING OF THE APPLICATION UNLESS THERE HAS BEEN A PATTERN OF SIMILAR CONDUCT IN THE PAST, OR WHERE THE EMPLOYEES WHO ENGAGED IN THE UNLAWFUL STRIKE WERE DISCHARGED AND HAVE CEASED TO BE EMPLOYEES OF THE APPLICANT. THE REASON FOR THE PROCEDURE ADOPTED IN 1954 WAS THAT IT WAS HOPED THAT BY BRINGING THE PARTIES TO THE DISPUTE BEFORE THE BOARD IN AN EXPEDITIOUS MANNER, THE BOARD COULD RULE ON THE STRIKE OR LOCKOUT AND IF A DECLARATION WAS MADE, THE PARTIES COULD REASSESS THEIR POSITION HAVING BEEN INFORMED OF THE UNLAWFULNESS OF THE ACTION TAKEN. AS WAS HOPED, IT HAS BEEN THE BOARD'S EXPERIENCE THAT ONCE A DECLARATION HAS BEEN MADE THERE IS USUALLY AN IMMEDIATE RETURN TO WORK. THIS RESUMPTION OF WORK OFTEN RESULTS IN THE WITHDRAWAL OF PENDING APPLICATIONS FOR CONSENT TO PROSECUTE. THE PURPOSES OF THE DECLARATION AS SET FORTH IN THE NATIONAL REFRACTORIES CASE HAVE BEEN FULFILLED WHEN THE LABOUR DISPUTE HAS BEEN RESOLVED. THE CAUSES OF THE DISPUTE CAN THEN BE REMEDIED THROUGH COLLECTIVE BARGAINING OR THE GRIEVANCE AND ARBITRATION PROCEDURES PROVIDED BY THE COLLECTIVE AGREEMENT BINDING THE PARTIES.

33. THE RESPONDENTS REQUESTED THE BOARD NOT TO GIVE REASONS FOR ITS DECISION IN THIS CASE. THE RESPONDENTS HAVE NOT RETURNED TO WORK. IN ADDITION, THE RESPONDENTS RAISED THE ISSUE OF SAFETY AS THEIR REASON FOR THE WORK STOPPAGE. APART FROM ANY OTHER CONSIDERATION THE BOARD IS OF OPINION THAT IT IS PROPER TO GIVE ITS REASONS FOR ITS DECISION IN ORDER THAT THE PUBLIC, TO WHOM THE APPLICANT AS A PUBLIC UTILITY IS RESPONSIBLE, BE MADE AWARE OF THE REAL REASON FOR THE WORK STOPPAGE WHICH HAS OCCURRED. IN ADDITION, THE BOARD WOULD BE EVADING ITS RESPONSIBILITY IF IT TREATED AN ISSUE OF THIS IMPORTANCE, WHICH TOOK EIGHT FULL DAYS FOR EVIDENCE AND ARGUMENT, IN THE CAVALIER MANNER SUGGESTED BY THE RESPONDENTS.

34. THE BOARD IS OF OPINION THAT SAFETY IS TOO IMPORTANT AN ISSUE FOR TRADE UNIONS, EMPLOYEES AND EMPLOYERS ALIKE, FOR IT TO BE USED IN AN ATTEMPT TO CLOUD THE TRUE REASONS FOR THE ACTIONS OF ANY GROUP OF EMPLOYEES. WHILE CONSTANT REFERENCE WAS MADE DURING THE COURSE OF THESE PROCEEDINGS TO MR. MCGUIRE, AN IRONWORKER WHO WAS ACCIDENTALLY KILLED ON



THE PROJECT, AND WHILE THE UNION HAS REQUESTED THAT THE INQUEST INTO MR. MCGUIRE'S DEATH TO BE REOPENED, NO EVIDENCE WAS CALLED WHICH WOULD TEND TO PROVE HOW THE DEATH OCCURRED. NO ONE WHO WITNESSED MR. MCGUIRE'S DEATH WAS CALLED TO TESTIFY. THE BOARD IS OF OPINION THAT MR. MCGUIRE'S UNFORTUNATE DEATH WAS BEING USED BY THE RESPONDENTS, NOT FOR THE PROMOTION OF SAFER PRACTICES, BUT TO BECLOUD THE TRUE REASON FOR THE WALK OUT. THE RESPONSIBILITY FOR THE WALK OUT RESTS PRIMARILY ON THE SHOULDERS OF MR. WINKLER, WHO EXHIBITS STRONG LEADERSHIP QUALITIES BUT WHO, AS THE EVIDENCE DISCLOSED, MISDIRECTED HIMSELF AND THE OTHER RESPONDENTS BECAUSE OF HIS HOT TEMPER. WHILE THE RESPONDENTS MAY NOT HAVE SUCCEEDED IN RATIONALIZING THEIR ACTIONS IN AN ATTEMPT TO JUSTIFY THE WORK STOPPAGE, SUCH RATIONALIZATION CANNOT CHANGE THE FACTS AS THEY EXISTED WHEN THE STOPPAGE BEGAN.

35. IN ALL THE CIRCUMSTANCES OF THIS CASE AND HAVING FULLY CONSIDERED ALL THE EVIDENCE ADDUCED AND THE AND THE VERY ABLE ARGUMENTS OF COUNSEL FOR THE APPLICANT AND THE RESPONDENTS, THE BOARD DECLARES THAT THE RESPONDENTS ON OR ABOUT DECEMBER 7TH AND 8TH, 1966 IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING REFUSED TO WORK OR TO CONTINUE TO WORK AND THEREBY ENGAGED IN A STRIKE AND THAT THE STRIKE ENGAGED IN BY THE RESPONDENTS IS UNLAWFUL PURSUANT TO THE PROVISIONS OF SECTION 54 SUBSECTION 2 OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER DECLARES THAT THE UNLAWFUL STRIKE ENGAGED IN BY THE RESPONDENTS HAS CONTINUED (EXCEPT FOR A PART OF THE WORK DAYS OF DECEMBER 15TH AND DECEMBER 16TH, 1966 DURING WHICH THE RESPONDENTS RETURNED TO WORK) UP TO JANUARY 6TH, 1967, THE LAST DAY OF THE HEARING IN THIS MATTER WHEN THE STRIKE WAS STILL IN PROGRESS.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

JANUARY 13, 1967.

I DISSENT.

DURING THE HEARING IN THIS CASE IT WAS BROUGHT TO THE BOARD'S ATTENTION THAT THE APPLICANT HAD SOUGHT ANOTHER REMEDY IN THIS MATTER BY APPLYING TO THE BOARD FOR LEAVE TO PROSECUTE THE RESPONDENTS IN THIS DISPUTE. COUNSEL FOR THE RESPONDENTS INFORMED THE BOARD THAT THE OTHER REMEDY SOUGHT WAS INITIATED AFTER THE HEARING IN THE INSTANT CASE HAD COMMENCED. HE CLAIMED THAT THE APPLICANT LEFT THE INFERENCE THAT HE HAD COMMENCED THIS ACTION WITH THE KNOWLEDGE THAT DURING THE COURSE OF THE HEARING HE COULD GET EVIDENCE PINNED DOWN FOR THE PURPOSE OF HIS SUBSEQUENT APPLICATION TO THE BOARD FOR CONSENT TO PROSECUTE THE RESPONDENTS.

COUNSEL FOR THE APPLICANT INFORMED THE BOARD THAT HE HAD PROVIDED A COURT REPORTER FOR HIS OWN USE BECAUSE OF THE OTHER REMEDY SOUGHT AND WANTED A RECORD OF WHAT WAS SAID IN THE INSTANT CASE.

IN LIGHT OF THE FOREGOING I SUBMIT THAT THE MAJORITY ARE IN ERROR IN USING THE DISCRETION GIVEN TO THE BOARD BY SECTION 67 OF THE ACT IN MAKING A DECLARATION IN THIS CASE.

IT IS THE BOARD'S LONG ESTABLISHED PRACTICE NOT TO GIVE REASONS FOR ITS DECISION IN APPLICATIONS FOR CONSENT TO PROSECUTE WHERE CONSENT IS GIVEN. THE REASONING BEHIND THIS PRACTICE IS STATED IN THE CANADIAN PACIFIC RAILWAY COMPANY (ROYAL YORK HOTEL) CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1961, P. 214.

THE BOARD STATED:

IN GRANTING LEAVE TO INSTITUTE A PROSECUTION, THE BOARD SELDOM GIVES REASONS FOR ITS DECISION. THE REASON FOR THIS PRACTICE IS THE DANGER THAT SUCH REASONS WILL BE INTERPRETED AS AN EXPRESSION OF OPINION BY THE BOARD ON THE MERITS OF THE PROSECUTION ITSELF.

SURELY IT IS ONLY COMMON LOGIC THAT IF THE BOARD GOES TO THE ABOVE LENGTH TO AVOID PREJUDICE TO THE RESPONDENT IN A CONSENT TO PROSECUTE CASE, IT IS DOUBLY BOUND IN THE INSTANT CASE, HAVING BEEN MADE AWARE OF THE ACTION OF THE APPLICANT TO APPLY FOR LEAVE TO PROSECUTE, TO AVOID MAKING A DECLARATION IN THIS APPLICATION. IN THE ALTERNATIVE EVEN IF IT MAKES SUCH A DECLARATION IT SURELY IS HONOUR BOUND IN LIGHT OF ITS PRACTICE IN CONSENT APPLICATIONS TO REFRAIN FROM STATING ITS REASONS FOR SUCH DECLARATION. THE STATING OF SUCH REASONS IN VIEW OF ITS KNOWLEDGE THAT THIS DISPUTE IS THE SUBJECT OF AN APPLICATION FOR CONSENT TO PROSECUTE, CAN ONLY HAVE THE EFFECT OF BEING INTERPRETED AS AN EXPRESSION OF OPINION BY THE BOARD ON THE MERITS OF THE PROSECUTION ITSELF.

FOR THE ABOVE STATED REASONS I WOULD HAVE USED THE DISCRETION GIVEN TO THE BOARD IN SECTION 67 OF THE ACT AND WOULD NOT HAVE MADE A DECLARATION IN THIS CASE.

12548-66-U: ALGOMA STEEL CORPORATION LIMITED (APPLICANT) V. BROTHERHOOD OF RAILROAD TRAINMEN, LODGE 611 (RESPONDENT).

- AND -

12549-66-U: ALGOMA STEEL CORPORATION LIMITED (APPLICANT) V. BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LODGE 606 (RESPONDENT).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 20, 1967.

THE APPLICANT BY TELEGRAM DATED DECEMBER 27, 1966, REQUESTED THAT THE BOARD CONSENT TO THE WITHDRAWAL OF THESE APPLICATIONS FOR DECLARATIONS THAT THE STRIKES TO WHICH THE APPLICATIONS PERTAINED WERE UNLAWFUL. THE HEARING OF THE APPLICATIONS WAS SCHEDULED FOR DECEMBER 28, 1966. THE RESPONDENT OBJECTED TO THE BOARD CONSENTING TO THE WITHDRAWAL OF THE APPLICATIONS. COUNSEL FOR THE PARTIES HAVE FILED WRITTEN ARGUMENT RESPECTING THE APPLICANT'S REQUEST. AFTER CONSIDERING THESE ARGUMENTS, THE BOARD IS OF OPINION THAT, IN THE CIRCUMSTANCES OF THIS CASE, THE PROCEEDINGS SHOULD BE TERMINATED AND THEY ARE HEREBY TERMINATED.

ONE OF THE REASONS GIVEN BY COUNSEL FOR THE RESPONDENT FOR OBJECTING TO CONSENT BEING GRANTED TO THE APPLICANT TO WITHDRAW ITS APPLICATIONS IS THAT THE APPLICANT HAS INDICATED THAT, IF THE EMPLOYEES CONCERNED AGAIN LEFT THEIR WORK, THE APPLICANT WOULD "RESUME THE APPLICATION". COUNSEL FOR THE RESPONDENT SUBMITS THAT, IF THE APPLICATIONS WERE DISMISSED, SECTION 77 (2) OF THE LABOUR RELATIONS ACT WOULD APPLY AND "THE RESPONDENT WOULD NOT HAVE TO SUBMIT TO SUCH HARASSMENT". ALTHOUGH COUNSEL HAS NOT STATED WHICH CLAUSE OF SUBSECTION 2 OF SECTION 77 OF THE ACT HE HAD IN MIND, IT WOULD APPEAR THAT HE INTENDED TO REFER TO CLAUSE (1). HOWEVER, THIS CLAUSE DOES NOT IMPOSE AN AUTOMATIC BAR ON AN UNSUCCESSFUL APPLICANT; IT GOES NO FURTHER THAN TO VEST IN THE BOARD A POWER TO IMPOSE A BAR IF IT SEES FIT TO DO SO. IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO IMPOSE A BAR IN CASES WHERE A STRIKE DECLARATION APPLICATION HAS BEEN DISMISSED. IN ADDITION, EVEN IF THE BOARD WERE TO IMPOSE A BAR IN THESE CASES, THAT BAR WOULD APPLY ONLY TO AN APPLICATION BASED ON THE EVENTS THAT GAVE RISE TO THE INSTANT APPLICATIONS. IF THE EMPLOYEES CONCERNED WERE TO LEAVE WORK AGAIN, AN ENTIRELY NEW SITUATION WOULD ARISE WHICH THE APPLICANT SURELY OUGHT NOT TO BE BARRED FROM BRINGING TO THE ATTENTION OF THE BOARD IN A NEW APPLICATION. OTHERWISE, IF A UNION WERE SUCCESSFUL IN HAVING A STRIKE DECLARATION DISMISSED ON ONE OCCASION, IT COULD OBTAIN IMMUNITY AGAINST RESPONSIBILITY FOR CALLING AN UNLAWFUL STRIKE THEREAFTER FOR THE PERIOD OF TIME DURING WHICH THE BAR APPLIED. WE CANNOT CONCEIVE THAT THE LEGISLATURE EVER INTENDED THAT SECTION 77(2)(1) WOULD BE CONSTRUED SO AS TO BRING ABOUT SUCH A RESULT.

INDEXED ENDORSEMENTS - PROSECUTION

12431-66-U: THE UPHOLSTERERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, THROUGH ITS AGENT LOCAL 30 (APPLICANT) V. HOUSE OF BRAEMORE UPHOLSTERED FURNITURE (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND L. LENKINSKI FOR THE APPLICANT, AND A. MILRAD AND W. L. FARRAR FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 5, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR VIOLATION OF SECTIONS 12 AND 48 OF THE LABOUR RELATIONS ACT. THOSE SECTIONS ARE AS FOLLOWS:-

12. THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS FROM THE GIVING OF THE NOTICE OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES AGREE UPON AND THEY SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE

EFFORT TO MAKE A COLLECTIVE AGREEMENT.

48. NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

2. THE APPLICANT IS BARGAINING AGENT FOR A UNIT OF ALL EMPLOYEES OF THE RESPONDENT. THE NUB OF THIS MATTER IS THE ADMITTED REFUSAL OF THE RESPONDENT TO BARGAIN WITH THE APPLICANT WHILE THE APPLICANT RETAINS AS A DULY APPOINTED MEMBER OF ITS NEGOTIATION COMMITTEE ONE MRS. DUFF, ITS RECORDING SECRETARY. THE RESPONDENT OBJECTS TO THE PRESENCE OF MRS. DUFF ON THE BARGAINING COMMITTEE ON THE GROUNDS THAT SHE IS AN EMPLOYEE OF A COMPETITOR OF THE RESPONDENT.

3. AT THE HEARING, COUNSEL FOR THE APPLICANT INDICATED THAT HIS REAL OBJECTIVE IN BRINGING THIS APPLICATION WAS NOT THE PROSECUTION OF THE RESPONDENT, BUT RATHER THE COMMENCEMENT OF COLLECTIVE BARGAINING BETWEEN THE PARTIES. COUNSEL FOR THE RESPONDENT UNDERTOOK TO BE BOUND BY THE BOARD'S RULING WITH RESPECT TO THE PROPRIETY OF THE RESPONDENT'S OBJECTIONS TO THE PRESENCE OF MRS. DUFF ON THE APPLICANT'S NEGOTIATION COMMITTEE, AND TO BARGAIN COLLECTIVELY WITH THE APPLICANT IN CONFORMITY WITH THE BOARD'S RULING.

4. UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT, A TRADE UNION MAY BE CERTIFIED OR VOLUNTARILY RECOGNIZED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF AN EMPLOYER. IT IS CLEAR THAT IT IS THE TRADE UNION ITSELF WHICH IS THE AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT. NOTHING IN THE ACT RESTRICTS A TRADE UNION OR, FOR THAT MATTER, AN EMPLOYER OR A COUNCIL OF TRADE UNIONS, OR AN EMPLOYER'S ORGANIZATION IN ITS SELECTION OF SPOKESMEN OR ADVISERS. IT MAY BE, AS WAS ADMITTED BY COUNSEL FOR THE APPLICANT, THAT CIRCUMSTANCES MIGHT EXIST IN WHICH A PARTY, BY REASON OF THE PARTICULAR FACTS OBTAINING IN SOME CASE, WOULD BE JUSTIFIED IN REFUSING TO NEGOTIATE IN THE PRESENCE OF A PARTICULAR INDIVIDUAL. WE NEED NOT PASS ON SUCH CIRCUMSTANCES HERE.

5. AT ONE TIME THE LABOUR RELATIONS ACT PROVIDED THAT A REQUEST FOR CONCILIATION SERVICES MIGHT BE DENIED WHERE, DURING BARGAINING, THE TRADE UNION HAD NOT BEEN REPRESENTED BY A BARGAINING COMMITTEE; R.S.O. 1960 CH. 202 s. 13(5)

(5) A BARGAINING COMMITTEE,



- (A) SHALL CONSIST OF EMPLOYEES OF THE EMPLOYER WHO ARE IN THE BARGAINING UNIT; OR
- (B) IN THE CASE OF BARGAINING BETWEEN A TRADE UNION AND AN EMPLOYERS' ORGANIZATION, SHALL CONSIST OF EMPLOYEES OF ONE OR MORE MEMBERS OF SUCH ORGANIZATION WHO ARE IN THE BARGAINING UNIT; OR
- (C) IN THE CASE OF BARGAINING BETWEEN A TRADE UNION AND A GROUP OF EMPLOYERS BARGAINING JOINTLY OR THROUGH REPRESENTATIVES OF SUCH EMPLOYERS, SHALL CONSIST OF EMPLOYEES OF ONE OR MORE OF THE EMPLOYERS IN SUCH GROUP WHO ARE IN THE BARGAINING UNIT; OR
- (D) IN THE CASE OF BARGAINING BETWEEN A COUNCIL OF TRADE UNIONS AND AN EMPLOYER, AN EMPLOYERS' ORGANIZATION OR A GROUP OF EMPLOYERS BARGAINING JOINTLY SHALL CONSIST OF EMPLOYEES OF THE EMPLOYER OR OF ONE OR MORE MEMBERS OF SUCH ORGANIZATION OR OF ONE OR MORE OF THE EMPLOYERS IN SUCH GROUP, AS THE CASE MAY BE, WHO ARE IN THE BARGAINING UNIT,

AND IN ANY CASE A BARGAINING COMMITTEE MAY INCLUDE ONE OR MORE OFFICERS OR OTHER REPRESENTATIVES OF THE TRADE UNION.

SECTION 13 WAS, HOWEVER, AMENDED BY S. O. 1964, CHAPTER 53, SECTION 2, AND NOW CONTAINS NO REFERENCE TO A BARGAINING COMMITTEE.

6. HAVING REGARD TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND TO THE CIRCUMSTANCES OF THE INSTANT CASE, WE CAN FIND NOTHING WHICH WOULD DISQUALIFY MRS. DUFF FROM ACTING AS A MEMBER OF THE UNION'S NEGOTIATING COMMITTEE AND ATTENDING THE NEGOTIATIONS BETWEEN THE PARTIES.

7. HAVING REGARD TO THE SUBMISSIONS OF COUNSEL AND THE UNDERTAKING OF COUNSEL FOR THE RESPONDENT, NO CONSENT TO THE INSTITUTION OF A PROSECUTION IS GRANTED IN THE INSTANT CASE.

8. THE APPLICATION IS DISMISSED.

12560-66-U: LOCAL 800 OF THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PIPEFITTING INDUSTRY OF CANADA & U.S.A. (APPLICANT) V, THE RALPH M. PARSONS CONSTRUCTION CO. OF CANADA LTD. (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. J. HUNEULT AND R. JAMES FOR THE APPLICANT, P. C. PEACOCK AND R. J. WALTER FOR THE RESPONDENT.

DECISION OF THE BOARD:

JANUARY 23, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 57 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT IS ENGAGED IN WORK ON A CONSTRUCTION PROJECT ON A SITE AT TIMMINS. THE PROJECT AS IT RELATES TO THE PLUMBING TRADE IS COVERED BY A COLLECTIVE AGREEMENT TITLED THE "CANADIAN NATIONAL CONSTRUCTION AGREEMENT" (HEREINAFTER REFERRED TO AS THE NATIONAL AGREEMENT) BETWEEN THE RESPONDENT AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (HEREINAFTER REFERRED TO AS THE UNITED ASSOCIATION). THE APPLICANT, WHICH HAS JURISDICTION OVER A GEOGRAPHIC AREA THAT INCLUDES TIMMINS, ALTHOUGH NOT A PARTY TO THE NATIONAL AGREEMENT IS BOUND BY ITS PROVISIONS. THE NATIONAL AGREEMENT ALLOWS LOCAL UNIONS TO ENTER INTO AGREEMENTS DEALING WITH TERMS AND CONDITIONS OF EMPLOYMENT NOT SPECIFICALLY DEALT WITH IN THE NATIONAL AGREEMENT. THE APPLICANT AND THE RESPONDENT DID, IN FACT, EXECUTE AN "UNDERSTANDING OF AGREEMENT" ON JULY 25TH, 1966 WHICH PURPORTS TO GOVERN WAGES AND CERTAIN WORKING CONDITIONS, INCLUDING COFFEE PERIODS. THE RESPONDENT SUBMITS THAT THE APPLICANT IS WITHOUT JURISDICTION TO MAKE THIS APPLICATION SINCE IT IS NOT A PARTY TO THE NATIONAL AGREEMENT. THE APPLICANT, ON THE OTHER HAND, ARGUES THAT IT IS ENTITLED TO MAKE THE INSTANT APPLICATION BY REASON OF THE "UNDERSTANDING OF AGREEMENT".

3. LET US ASSUME FOR PURPOSES OF ARGUMENT, BUT WITHOUT MAKING A FINDING, THAT THE APPLICANT HAS ESTABLISHED ITS ENTITLEMENT TO MAKE THE APPLICATION. THE EVIDENCE IS THAT ON THE MORNING OF NOVEMBER 28TH, 1966, TWENTY-TWO EMPLOYEES, ALL OF WHOM WERE MEMBERS OF THE APPLICANT, WERE DISCHARGED BY THE RESPONDENT. THE REASONS SHOWN FOR THEIR DISCHARGE ON THE "TERMINATION NOTICE", GIVEN TO EACH OF THEM AT THE TIME OF THEIR DISCHARGE, WAS EITHER "EATING DURING COFFEE BREAK ON COMPANY TIME" OR "SITTING DURING COFFEE BREAK". ROBERT WALTER, THE RESIDENT CONSTRUCTION MANAGER TESTIFIED THAT THE DISCHARGES WERE PROMPTED BY CONTINUED ABUSES OF THE COFFEE BREAK PRIVILEGES GRANTED BY THE RESPONDENT, OVER A PERIOD OF MONTHS. UPON THE DISCHARGE OF THE TWENTY-TWO EMPLOYEES, ALL OTHER MEMBERS OF LOCAL 800 WORKING ON THE SITE WALKED OFF THE JOB. THERE IS NO DISPUTE THAT BY WALKING OFF THE JOB THESE EMPLOYEES ACTED IN CONTRAVENTION OF THE NATIONAL AGREEMENT AND ENGAGED IN AN UNLAWFUL STRIKE.

4. SECTION 57(1) OF THE ACT READS AS FOLLOWS:

NO PERSON SHALL DO ANY ACT IF HE KNOWS OR OUGHT TO KNOW THAT, AS A PROBABLE AND REASONABLE CONSEQUENCE OF THE ACT, ANOTHER PERSON OR PERSONS WILL ENGAGE IN AN UNLAWFUL STRIKE OR AN UNLAWFUL LOCK-OUT.

THE APPLICANT SUBMITS THE CONDUCT OF THE RESPONDENT IN DISCHARGING THE TWENTY-TWO EMPLOYEES WAS SO ARBITRARY AND SO LACKING IN ANY JUSTIFICATION THAT THE RESPONDENT OUGHT TO HAVE KNOWN THAT AS A PROBABLE AND REASONABLE CONSEQUENCE OF ITS ACTION, ALL OF THE REMAINING MEMBERS OF LOCAL 800 EMPLOYED ON THE JOB WOULD ENGAGE IN AN UNLAWFUL STRIKE.

5. THE BOARD IS NOT CALLED UPON TO MAKE A DETERMINATION ON THE MERITS OF THE RESPONDENT'S CONDUCT OTHER THAN AS IT RELATES TO THE ALLEGED VIOLATION OF SECTION 57 OF THE ACT. HOWEVER, ASSUMING THAT THERE WERE, IN FACT, ABUSES OF THE COFFEE PERIODS JUSTIFYING THE ACTION TAKEN BY THE RESPONDENT IN DISCHARGING MEMBERS OF THE APPLICANT, THE EVIDENCE DOES SUGGEST THAT THE MANNER IN WHICH THE RESPONDENT CHOSE TO MAKE THE DISCHARGES WAS PRECIPITOUS AND ILL-ADVISED, AND THAT THE SELECTION OF THE TWENTY-TWO EMPLOYEES WHO WERE DISCHARGED WAS ON A RANDOM BASIS RATHER THAN ON THE MERITS OF THE INDIVIDUAL CASE.

6. BE THAT AS IT MAY, THE FACT IS THAT THE NATIONAL AGREEMENT, WHICH IS BINDING ON THE APPLICANT, CONTAINS A GRIEVANCE PROCEDURE FOR THE SETTLEMENT OF ALL DISPUTES AND CONTROVERSIES ARISING DURING THE LIFETIME OF THE AGREEMENT. PRIOR TO THE MEMBERS OF LOCAL 800 LEAVING THEIR JOBS AND THEREBY ENGAGING IN A STRIKE WHICH THE MEMBERS KNEW OR SHOULD HAVE KNOWN WAS UNLAWFUL, THE APPLICANT DID NOT PROPOSE NOR DID IT MAKE ANY ATTEMPT TO UTILIZE THE GRIEVANCE PROCEDURE. IN THIS REGARD WE NOTE THAT GERALD THOMPSON, A UNION STEWARD FOR LOCAL 800, WAS PRESENT ON THE JOB SITE DURING THE PERIOD SURROUNDING THE DISCHARGE OF THE TWENTY-TWO EMPLOYEES AND WAS FULLY INFORMED AND AWARE OF THE SITUATION. THE EVIDENCE SUGGESTS, HOWEVER, THAT THOMPSON DID NOT CONTEMPLATE THE USE OF THE GRIEVANCE PROCEDURE AND MADE NO SERIOUS EFFORT TO PREVENT THE MEMBERS OF LOCAL 800 FROM WALKING OFF THE JOB.

7. IN OUR OPINION, THE ACTION TAKEN BY MEMBERS OF LOCAL 800 WAS NOT A REASONABLE CONSEQUENCE TO THE RESPONDENT'S CONDUCT WHEN A PROCEDURE FOR THE SETTLEMENT OF THEIR GRIEVANCE WAS AVAILABLE TO THEM. FURTHER, THE BOARD IS NOT PREPARED TO MAKE ANY DETERMINATION WHICH MIGHT APPEAR TO CONDONE THE UNLAWFUL STRIKE ENGAGED IN BY MEMBERS OF THE APPLICANT. FINALLY, IN OUR VIEW, NO USEFUL PURPOSE WOULD BE SERVED BY GRANTING THE APPLICANT LEAVE TO PROSECUTE IN THE CIRCUMSTANCES OF THE INSTANT CASE.

8. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

#### INDEXED ENDORSEMENTS - SECTION 65

12427-66-U: TEXTILE WORKERS UNION OF AMERICA (COMPLAINANT) V. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, J. McCONNELL AND V. SKURJAT FOR THE COMPLAINANT, AND D. F. O. HERSEY AND W. F. HOWE FOR THE RESPONDENT.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER  
H. F. IRWIN: JANUARY 24, 1967.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 59 OF THE LABOUR RELATIONS ACT.

2. THE MATERIAL FACTS ARE AS FOLLOWS: THE COMPLAINANT TRADE UNION WAS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE SMITH MANUFACTURING, LIMITED, A WHOLLY OWNED SUBSIDIARY OF ALLIED CHEMICAL CANADA, LTD. ON SEPTEMBER 15TH, 1966, SMITH MANUFACTURING AND ALLIED CHEMICAL AGREED TO SELL TO THE RESPONDENT, CANADIAN GYPSUM COMPANY LIMITED, CERTAIN REAL PROPERTY PLANTS, EQUIPMENT, INVENTORY AND OTHER ASSETS. THE AGREEMENT OF PURCHASE AND SALE PROVIDED THAT THE TRANSACTION SHOULD BE EFFECTIVE AT 12:01 A.M. ON OCTOBER 1ST, 1966. IT IS NOT CONTESTED THAT THIS SALE, WHICH TOOK PLACE AS AGREED, CONSTITUTED THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT.

3. ON SEPTEMBER 20TH, 1966, THE COMPLAINANT SENT A NOTICE TO THE RESPONDENT, PURPORTING TO BE A NOTICE PURSUANT TO SECTION 47A OF THE ACT. ON SEPTEMBER 28TH, 1966, THE RESPONDENT COMPANY REPLIED TO THIS NOTICE AND SUGGESTED OCTOBER 5TH, 1966, AS A SUITABLE DATE FOR A MEETING. IN ITS LETTER, THE COMPANY SET OUT WHAT THE WAGES AND PRACTICES WOULD BE UNDER ITS OPERATION. UNDER HEADING "HOURS AND OVERTIME" IT WAS STATED THAT WORK IN EXCESS OF 8 HOURS PER DAY OR 40 HOURS PER WEEK WOULD BE PAID FOR AT ONE AND ONE-HALF TIMES THE EMPLOYEE'S STRAIGHT TIME HOURLY RATE. IN THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT TRADE UNION AND THE SMITH MANUFACTURING, LIMITED, IT HAD BEEN PROVIDED THAT OVERTIME RATES WOULD BE PAID FOR WORK PERFORMED IN EXCESS OF  $39\frac{1}{2}$  HOURS PER WEEK.

4. FOLLOWING THE SALE OF THE BUSINESS TO THE RESPONDENT COMPANY, CERTAIN COLLECTIVE BARGAINING PROPOSALS WERE SENT TO THE RESPONDENT BY THE TRADE UNION, AND ON OCTOBER 5TH, 1966, THE MEETING REFERRED TO ABOVE WAS HELD. IT IS CLEAR FROM ALL OF THE FOREGOING THAT THE COMPLAINANT TRADE UNION GAVE NOTICE TO BARGAIN TO THE RESPONDENT EMPLOYER BEFORE OCTOBER 7TH, 1966.

5. ALTHOUGH THE COMPANY HAD, IN ITS LETTER TO THE TRADE UNION DATED SEPTEMBER 28TH, 1966, STATED THAT OVERTIME RATES WOULD BE PAID FOR TIME WORKED IN EXCESS OF 40 HOURS PER WEEK, THE COMPANY DID, FOR THE PAY PERIOD ENDING OCTOBER 8TH, 1966, PAY CERTAIN EMPLOYEES OVERTIME RATES FOR TIME WORKED IN EXCESS OF  $39\frac{1}{2}$  HOURS PER WEEK. ON OCTOBER 7TH, 1966, THE COMPANY POSTED A NOTICE ON THIS SUBJECT, WHICH READ IN PART AS FOLLOWS:-

UNDER THE PRESENT SCHEDULE, OVERTIME WILL BE PAID AFTER 40 HOURS OF WORK DURING ANY WORK WEEK AND AFTER 8 HOURS DURING ANY DAY. TIME AND ONE HALF WILL BE PAID FOR ALL HOURS WORKED ON SUNDAY.



IT IS ARGUED ON BEHALF OF THE COMPLAINANT THAT THE POLICY EXPRESSED IN THE NOTICE CONSTITUTES AN ALTERATION OF CONDITIONS OF EMPLOYMENT.

6. SECTION 59(1) OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:-

WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,

(A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(I) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR

(II) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE; OR

(B) UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED,

WHICHEVER OCCURS FIRST.

NONE OF THE EVENTS REFERRED TO IN PARAGRAPHS (A) AND (B) OF THIS SECTION HAS OCCURRED. THE NOTICE GIVEN PURSUANT TO SECTION 47A HAS THE EFFECT OF NOTICE UNDER SECTION 11: SECTION 47A(2). THUS, IF THE NOTICE OF OCTOBER 7TH, CONSTITUTES AN ALTERATION OF WORKING CONDITIONS, IT WOULD FOLLOW THAT THE RESPONDENT COMPANY HAS VIOLATED SECTION 59 OF THE ACT.

7. WE ARE NOT, HOWEVER, ABLE TO PLACE THIS INTERPRETATION ON THE EVIDENCE. THE PURCHASER OF A BUSINESS OF AN EMPLOYER WHO IS PARTY TO A COLLECTIVE AGREEMENT MAY BE REQUIRED, SUBJECT TO THE PROVISIONS OF SECTION 47A TO BARGAIN WITH THE TRADE UNION WHICH HAD BEEN BARGAINING AGENT FOR THE EMPLOYEES OF THE "PREDECESSOR" EMPLOYER. THE PURCHASER,

HOWEVER, IS NOT HIMSELF BOUND BY THE TERMS OF THE COLLECTIVE AGREEMENT TO WHICH THE PREDECESSOR HAD BEEN A PARTY. THE PURCHASER OF THE BUSINESS MAY HIRE EMPLOYEES AND ESTABLISH SUCH RATES OF WAGES AND TERMS AND CONDITIONS OF EMPLOYMENT AS HE SEES FIT. ONCE NOTICE TO BARGAIN IS GIVEN, HOWEVER, HE IS THEN SUBJECT TO THE PROHIBITION SET OUT IN SECTION 59 OF THE LABOUR RELATIONS ACT.

8. IN THE INSTANT CASE IT IS ARGUED THAT SUCH NOTICE WAS GIVEN ON SEPTEMBER 20TH, 1966. THIS IS CONTESTED BY COUNSEL FOR THE RESPONDENT ON THE GROUND THAT, SINCE THE SALE HAD NOT TAKEN PLACE AT THAT TIME, THE NOTICE COULD HAVE NO EFFECT. WE DO NOT FIND IT NECESSARY TO DETERMINE THIS ISSUE, HOWEVER, SINCE, EVEN IF IT IS ASSUMED THAT THE NOTICE WAS PROPER AND EFFECTIVE IT COULD ONLY PREVENT THE RESPONDENT FROM MAKING ALTERATIONS IN WORKING CONDITIONS ONCE THESE CONDITIONS HAD BEEN ESTABLISHED. IT WOULD BE ABSURD TO CONCLUDE THAT THE NOTICE HAD THE EFFECT OF PREVENTING AN EMPLOYER FROM ESTABLISHING RATES OF WAGES AND CONDITIONS OF EMPLOYMENT IN THE FIRST INSTANCE. THE ONLY REASONABLE CONCLUSION, GIVING THE FULLEST EFFECT TO THE NOTICE OF SEPTEMBER 20TH, IS THAT IT PREVENTED THE RESPONDENT COMPANY FROM CHANGING THE RATES OF WAGES AND CONDITIONS OF EMPLOYMENT WHICH WENT INTO EFFECT FOLLOWING THE COMMENCEMENT OF ITS OPERATIONS AT THE PLANT IN QUESTION. THESE RATES AND CONDITIONS WOULD BE THOSE REFERRED TO IN THE COMPANY'S LETTER TO THE UNION DATED SEPTEMBER 28TH, 1966. IN THESE CIRCUMSTANCES, THE CALCULATION OF CERTAIN EMPLOYEES' OVERTIME PAYMENTS, REFERRED TO EARLIER, WAS IN ERROR, AND THE NOTICE POSTED ON OCTOBER 7TH SERVED MERELY TO CORRECT THIS ERROR AND NOT TO ALTER THE EXISTING CONDITIONS OF EMPLOYMENT.

9. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD CONCLUDES THAT THE AGGRIEVED PERSONS HAVE NOT BEEN DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT IN THE MANNER ALLEGED IN THE COMPLAINT.

10. THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: JANUARY 24, 1967.

I DISSENT. HAVING REGARD TO THE EVIDENCE, I WOULD CONCLUDE THAT THE RESPONDENT DID ALTER WORKING CONDITIONS AS ALLEGED. I WOULD HAVE GRANTED THE RELIEF SOUGHT.

12439-66-U: ROY W. THOMPSON (COMPLAINANT) V. SCARBORO BOARD OF EDUCATION (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 4, 1967.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT HE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50A OF THE LABOUR RELATIONS ACT, IN THAT HE WAS

UNJUSTLY DISCHARGED, AND THE EXECUTIVE OF LOCAL 149 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES REFUSED TO PROCESS HIS GRIEVANCE OR TO REPRESENT HIM AT HIS FINAL HEARING BEFORE OFFICIALS OF THE RESPONDENT. THIS ALLEGATION, HOWEVER, IF PROVED, WOULD NOT ESTABLISH THAT THE RESPONDENT HAS ACTED CONTRARY TO THE LABOUR RELATIONS ACT. IN CASES SUCH AS THE INSTANT CASE, WHERE THERE IS A COLLECTIVE AGREEMENT IN EFFECT, IT IS WELL ESTABLISHED THAT THE REMEDY FOR ALLEGED WRONGFUL DISCHARGE MUST BE SOUGHT THROUGH THE GRIEVANCE AND ARBITRATION PROCEDURES ESTABLISHED BY THE COLLECTIVE AGREEMENT. WHETHER OR NOT ANY PARTICULAR CASE IS PROCESSED IN THIS WAY IS (SUBJECT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT) A MATTER WITHIN THE DISCRETION OF THE TRADE UNION WHICH IS BARGAINING AGENT FOR THE EMPLOYEES AFFECTED. IN THE WALLACE BARNES COMPANY LIMITED CASE, 61 C.L.L.C. 928, THE BOARD, AFTER NOTING THE ROLE OF A TRADE UNION AS COLLECTIVE BARGAINING AGENT FOR THE EMPLOYEES FOR THE PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT WENT ON TO SAY:

THE TRADE UNION IS ALSO THEIR BARGAINING AGENT WITH RESPECT TO THE ADMINISTRATION OF THE COLLECTIVE AGREEMENT AND WHEN DISPUTES ARISE INVOLVING THE INTERPRETATION OR ALLEGED VIOLATION OF THE AGREEMENT, THESE ARE MATTERS FOR THE PARTIES TO THAT AGREEMENT, THAT IS, THE TRADE UNION AND THE EMPLOYER.

2. IN THE PITT STREET HOTEL CASE, 63 C.L.L.C. 1149, AND THE PLUMBERS ASSOCIATION CASE, BOARD FILE NO. 11557-65-U, THE BOARD HELD THAT IN CERTAIN EXCEPTIONAL CIRCUMSTANCES IT WOULD, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 65 OF THE ACT, INQUIRE INTO A COMPLAINT EVEN THOUGH AN ALTERNATIVE REMEDY EXISTED UNDER A COLLECTIVE AGREEMENT. IN THE PITT STREET HOTEL CASE THERE WAS AN ALLEGATION OF COLLUSION BETWEEN THE EMPLOYER AND THE TRADE UNION. IN THE PLUMBERS ASSOCIATION CASE IT WAS FOUND THAT THE TRADE UNION ITSELF HAD PROCURED THE DISCHARGE OF THE AGGRIEVED PERSON. NO SUCH SPECIAL CIRCUMSTANCES ARE ALLEGED TO EXIST IN THE INSTANT CASE, IN WHICH IT MUST BE NOTED ONLY THE EMPLOYER HAS BEEN NAMED AS A RESPONDENT. IN THESE CIRCUMSTANCES THE PROPER REMEDY IS TO BE SOUGHT BY WAY OF RESORT TO THE GRIEVANCE AND ARBITRATION PROCEDURE. IN THESE MATTERS THE TRADE UNION IS THE AGENT OF THE EMPLOYEES AND THE BOARD WILL NOT INTERFERE (SAVE IN SUCH EXCEPTIONAL CASES AS THOSE REFERRED TO ABOVE) WITH THE INTERNAL MANAGEMENT OF THE TRADE UNION'S AFFAIRS IN THIS REGARD.

3. IN THE OPINION OF THE BOARD, THE COMPLAINT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS DISMISSED.

12582-66-U: MR. IAN HOOD (COMPLAINANT) V. GENERAL BAKERIES LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN,  
AND BOARD MEMBERS P. J. O'KEEFE AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 24, 1967.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT HE WAS DISCHARGED FOR ALLEGEDLY ATTEMPTING "TO FORM THE FOREMEN OF THE RESPONDENT INTO A BARGAINING UNIT".

2. RETAIL, WHOLESALE, BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461 IS THE BARGAINING AGENT FOR EMPLOYEES OF THE RESPONDENT AND THERE IS A COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THAT LOCAL AND THE RESPONDENT. THE COMPLAINANT IS THE CHIEF UNION STEWARD IN THE PLANT.

3. THE COMPLAINANT FILED A GRIEVANCE IN CONNECTION WITH HIS DISCHARGE AND SUBSEQUENTLY FILED THIS COMPLAINT. THE UNION AND THE COMPANY HAVE PROCESSED THE GRIEVANCE AND BEING UNABLE TO RESOLVE IT, HAVE AGREED TO SUBMIT IT TO ARBITRATION.

4. THE COLLECTIVE AGREEMENT PROVIDES BY ARTICLE 3.03 AS FOLLOWS:

THE UNION AGREES THAT THERE WILL BE NO UNION ACTIVITY ON OR OFF THE PREMISES DURING AN EMPLOYEE'S WORKING HOURS WITHOUT THE AUTHORIZATION OF THE DIVISION MANAGER OR HIS DELEGATE.

THE COMPLAINANT ADMITS THAT THE ACTIVITIES WHICH RESULTED IN HIS DISCHARGE OCCURRED DURING WORKING HOURS ALTHOUGH HE HIMSELF WAS ON HIS DAY OFF. IT IS CLEAR, THEN, THAT THERE IS INVOLVED IN THIS COMPLAINT AN INTERPRETATION OF THE COLLECTIVE AGREEMENT BINDING ON THE COMPLAINANT.

5. IN THE WALLACE BARNES COMPANY LIMITED CASE, 61 C.L.L.C. 928, THE BOARD, AFTER NOTING THE ROLE OF A TRADE UNION AS COLLECTIVE BARGAINING AGENT FOR THE EMPLOYEES FOR THE PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT, WENT ON TO SAY:

THE TRADE UNION IS ALSO THEIR BARGAINING AGENT WITH RESPECT TO THE ADMINISTRATION OF THE COLLECTIVE AGREEMENT AND WHEN DISPUTES ARISE INVOLVING THE INTERPRETATION OR ALLEGED VIOLATION OF THE AGREEMENT, THESE ARE MATTERS FOR THE PARTIES TO THAT AGREEMENT, THAT IS, THE TRADE UNION AND THE EMPLOYER.

REFERENCE IS ALSO MADE TO THE SCARBOROUGH BOARD OF EDUCATION CASE, JANUARY, 1967, BOARD FILE 12439-66-U:



6. HAVING REGARD TO THE FACT THAT THIS MATTER HAS BEEN REFERRED TO ARBITRATION AND TO THE OTHER CONSIDERATIONS SET OUT ABOVE, THE BOARD DOES NOT DEEM IT ADVISABLE TO INQUIRE FURTHER INTO THIS COMPLAINT AND THE COMPLAINT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - SECTION 79(2)

12403-66-M: INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED (APPLICANT)  
V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL 35 (RESPONDENT).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. P. SANDERSON, P. M. LANZ, G. S. FREEMAN AND F. D. MOFFAT FOR THE APPLICANT, T. ARMSTRONG, J. HOGAN AND R. VIOLOT FOR THE RESPONDENT.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER:  
JANUARY 17, 1967.

1. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED DECEMBER 4TH, 1966 AND THE REPRESENTATIONS OF THE PARTIES MADE AT THE BOARD HEARING IN THIS MATTER.

2. THE EVIDENCE REVEALS THAT THE PRIMARY FUNCTION OF PERCY LUGG IS TO ASSIGN WORK TO SPECIFICATION COMPILERS AND PROCESS PLANNERS AND TO OVERSEE AND REGULATE ITS EXECUTION. IN THE CARRYING OUT OF HIS RESPONSIBILITIES LUGG ACTS UNDER THE DIRECTION OF HIS IMMEDIATE SUPERVISOR MR. ACKERT, AND IN HIS ABSENCE, UNDER THE DIRECTION OF MR. HORLACKER, WHO IS ACKERT'S SUPERVISOR. IT IS ACKERT, HOWEVER, WHO EXERCISES THE EFFECTIVE SUPERVISION OVER THE EIGHTEEN EMPLOYEES CONCERNED AND IT IS HE WHO CARRIES THE RESPONSIBILITY FOR THE HIRING AND DISCHARGE OF THESE EMPLOYEES, ALTHOUGH HE HAS CONSULTED LUGG ON SUCH MATTERS. IN OTHER WORDS, LUGG DOES NOT HAVE MANAGERIAL CONTROL AND AUTHORITY OVER THE EMPLOYEES WORKING IN HIS SECTION. RATHER, HE PERFORMS THE ROLE OF A CONDUIT GIVING INSTRUCTIONS TO THE EMPLOYEES IN ACCORDANCE WITH DIRECTIONS HE HAS RECEIVED FROM ACKERT WHO IS A MEMBER OF MANAGEMENT. ANY INDEPENDENT INITIATIVE EXERCISED BY LUGG IS CONFINED TO THE ASSIGNMENT OF WORK AND THE REGULATION OF ITS EXECUTION. THE BOARD THEREFORE FINDS THAT LUGG DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. WE MAKE THIS FINDING DESPITE THE FACT THAT PROCESS PLANNERS, TO WHOM LUGG ASSIGNS WORK, ARE NOT INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT. IN THIS REGARD WE NOTE THAT THE PROCESS PLANNERS WERE EXCLUDED FROM THE BARGAINING UNIT ON THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT AND NOT AS A RESULT OF A DETERMINATION BY THE BOARD BASED ON EVIDENCE AS TO THEIR DUTIES AND RESPONSIBILITIES. MORE IMPORTANTLY, HOWEVER, THE QUESTION FOR DETERMINATION HERE IS NOT LUGG'S STATUS IN RELATION TO THE BARGAINING UNIT, BUT WHETHER OR NOT HE

IS AN EMPLOYEE FOR THE PURPOSES OF THE ACT. WITH RESPECT TO THE ALTERNATIVE SUBMISSION OF THE APPLICANT THE BOARD FINDS THAT LUGG'S ACCESS TO PLANNING AND COST INFORMATION REGARDING PRODUCTION IS NOT SUFFICIENTLY RELATED TO LABOUR RELATIONS AS TO CAUSE THE BOARD TO FIND THAT HE IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

3. THE BOARD ACCORDINGLY FINDS THAT PERCY LUGG IS AN EMPLOYEE FOR PURPOSES OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER R. W. TEAGLE: JANUARY 17, 1967.

I DISSENT.

ON THE BASIS OF THE EVIDENCE I FIND THAT IN THE PERFORMANCE OF HIS DUTIES AND RESPONSIBILITIES IN RELATION TO THE EIGHTEEN EMPLOYEES WHOM HE SUPERVISES PERCY LUGG EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. IN MY VIEW, THE VERY FACT THAT SOME OF THE EMPLOYEES WHOM HE SUPERVISES ARE EXCLUDED FROM THE BARGAINING UNIT CLEARLY INDICATES THE REALITY OF THE SITUATION. EVEN THOUGH PROCESS PLANNERS WERE EXCLUDED FROM THE BARGAINING UNIT ON AGREEMENT OF THE PARTIES, IT IS REASONABLE TO ASSUME THAT THE RESPONDENT AGREED TO SUCH AN EXCLUSION BECAUSE IT BELIEVED THEY EXERCISED MANAGERIAL FUNCTIONS.

I ACCORDINGLY FIND THAT PERCY LUGG IS NOT AN EMPLOYEE FOR PURPOSES OF THE ACT.

INDEXED ENDORSEMENT - SECTION 79A

12550-66-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL 2486 (TRADE UNION) V. GERARD BUILDERS OF NORTH BAY LIMITED (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND D. W. FORGIE.

APPEARANCES AT THE HEARING: S. P. GRAHAM APPEARING FOR THE EMPLOYER,  
AND NO ONE APPEARING FOR THE TRADE UNION.

DECISION OF THE BOARD: JANUARY 26, 1967.

1. THE MINISTER HAS REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION WHETHER THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN GERARD BUILDERS OF NORTH BAY LIMITED AND UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486.

2. THE TRADE UNION'S POSITION IS THAT A DOCUMENT DATED THE 22ND DAY OF MAY, 1966, PURPORTING TO BE AN AGREEMENT IN WRITING BETWEEN THE EMPLOYER AND THE TRADE UNION, CONSTITUTES A BINDING COLLECTIVE AGREEMENT BETWEEN THEM.

3. THE EMPLOYER TAKES THE POSITION THAT THE DOCUMENT IN QUESTION DOES NOT CONSTITUTE AN AGREEMENT BETWEEN THE PARTIES, BECAUSE NO AGREEMENT WAS REACHED ESTABLISHING AN EFFECTIVE DATE IN THE WAGE CLAUSE.

4. A COPY OF THE DISPUTED DOCUMENT, BEARING SIGNATURES OF S. P. GRAHAM ON BEHALF OF THE EMPLOYER, AND P. E. GUERTIN ON BEHALF OF THE TRADE UNION, WAS FILED WITH THE BOARD.

5. CHANGES, OBVIOUS ON ITS FACE, HAVE BEEN MADE TO THE TYPEWRITTEN DOCUMENT. ON PAGE 2 THERE HAS BEEN ADDED ON TO THE HEADING OF CLAUSE 5 THE WORDS "READ NORTH BAY IN LIEU OF SUDBURY". THE WORDS ARE HAND PRINTED IN INK. BESIDE THE ADDED WORDS ARE WRITTEN TWO SETS OF INITIALS "S.P.G." AND "P.E.G.", WHICH CORRESPOND TO THE NAMES OF THE SIGNATORIES FOR THE COMPANY AND THE UNION RESPECTIVELY. A FURTHER CHANGE APPEARS IN SUB-CLAUSE (B) 3 OF CLAUSE 5. HERE THE WORD "SUDBURY" HAS BEEN STRUCK OUT AND THE WORDS "NORTH BAY" WRITTEN IN. THE SAME TWO SETS OF INITIALS APPEAR IN THE MARGIN OPPOSITE THIS CHANGE.

6. IN CLAUSE 12 (F) ON PAGE 6, WHICH IS UNDER THE HEADING "WAGE RATES", A FURTHER ALTERATION HAS BEEN MADE. IN THIS INSTANCE, FOLLOWING THE WORD "EFFECTIVE" THE WORDS "JUNE 1ST, 1966" HAVE BEEN STRUCK OUT AND THE WORDS "JAN. 1ST, 1967" HAVE BEEN WRITTEN IN IN INK ABOVE THE DELETED WORDS. OPPOSITE THIS ALTERATION THERE APPEARS, HOWEVER, ONLY ONE SET OF INITIALS, THAT OF S. G. GRAHAM FOR THE COMPANY. THE ABSENCE OF THE INITIALS OF P. E. GUERTIN FROM THIS CHANGE, PARTICULARLY WHEN CONSIDERED WITH THEIR PRESENCE IN THE OTHER INSTANCES CITED, OFFERS INTRINSIC PRIMA FACIE EVIDENCE, PLAIN ON THE FACE OF THE DOCUMENT ITSELF, THAT THE PARTIES WERE NOT IN AGREEMENT UPON THIS MOST IMPORTANT CLAUSE WHICH GOES TO THE ROOT OF THE PROPOSED AGREEMENT.

7. THE EVIDENCE SURROUNDING THE PREPARATION AND EXECUTION OF THE DOCUMENT IS THAT COPIES OF IT WERE PREPARED BY THE UNION AND FORWARDED, UNSIGNED, TO MR. GRAHAM. GRAHAM MADE THE ADDITIONS AND AMENDMENTS PREVIOUSLY REFERRED TO, INITIALLED EACH CHANGE, SIGNED THE DOCUMENT AND RETURNED THEM TO THE UNION APPARENTLY WITHOUT COMMENT. THE UNION RETURNED ONE SIGNED COPY OF THE DOCUMENT TO THE EMPLOYER ACCOMPANIED BY A LETTER DATED MAY 30TH, 1966, THE RELEVANT PORTION OF WHICH READS:-

I HAVE RECEIVED THE COPIES OF THE AGREEMENTS FOR THE NORTHERN PORTION OF THE DISTRICT OF NIPISSING BEARING YOUR SIGNATURE. ENCLOSED PLEASE FIND ONE (1) SIGNED COPY.

I NOTE THAT YOU HAVE MADE TWO CHANGES. ONE WAS ON CLAUSE 5 WHICH I HAVE INITIALED, THE OTHER CHANGE WAS ON CLAUSE 12, WAGE RATES, PARAGRAPH (F). YOU HAVE CROSSED OUT JUNE 1ST, 1966 AND WRITTEN IN JANUARY 1ST, 1967. I HAVE NOT INITIALED THIS CHANGE AS IT IS NOT WHAT WAS AGREED UPON.

8. IN THE OPINION OF THE BOARD, IT IS PLAIN, ON THE FACE OF THE DOCUMENT ITSELF, THAT THE PARTIES WERE NOT IN AGREEMENT AS TO THE EFFECTIVE DATE OF THE WAGE CLAUSE. THIS CONCLUSION IS CLEARLY CONFIRMED BY THE WORDS OF THE UNION'S LETTER, STATING "YOU HAVE CROSSED OUT JUNE 1ST, 1966 AND WRITTEN IN JANUARY 1ST, 1967. I HAVE NOT INITIALED THIS CHANGE AS IT IS NOT WHAT WAS AGREED UPON". THE ACTION OF THE UNION IN SIGNING THE DOCUMENT AFTER INITIALLING TWO OF THE COMPANY'S THREE AMENDMENTS CAN ONLY MEAN THAT IT WAS REJECTING THE COMPANY'S AMENDMENT TO THE WAGE CLAUSE (WHICH IT, THE UNION, DECLINED TO INITIAL) AND WAS RE-SUBMITTING THE ORIGINAL CLAUSE. THIS CONSTITUTED A COUNTER-PROPOSAL WHICH WAS NOT ACCEPTED BY THE COMPANY AND, CONSEQUENTLY, NO FINAL AGREEMENT WAS EVER REACHED.

9. ON THE BASIS OF ALL THE EVIDENCE, THE BOARD FINDS THAT THE DOCUMENT DATED THE 22ND DAY OF MAY 1966, PURPORTING TO BE AN AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION HEREIN IS NOT A COLLECTIVE AGREEMENT.

10. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS "NO".

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

12456-66-JD: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)  
AND ITS LOCAL 531 (COMPLAINANT) V. NORTHERN ELECTRIC COMPANY LIMITED  
(RESPONDENT) V. NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION (INTERVENER).

BEFORE: J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. RUSSELL AND V. BJARNASON FOR THE APPLICANT,  
P. F. NOLAN, T. SCOTT, E. LUCKING AND R. TORRANCE FOR THE RESPONDENT,  
T. L. BURNETT, W. HOWES, J. S. LENNIE AND D. W. CUSHING FOR THE INTERVENER.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:

JANUARY 25, 1967.

1. THIS IS A REQUEST BY THE COMPLAINANT THAT THE BOARD ISSUE A DIRECTION PURSUANT TO SECTION 66 OF THE LABOUR RELATIONS ACT WITH RESPECT TO AN ASSIGNMENT OF WORK MADE BY THE RESPONDENT, THE PARTICULARS OF WHICH ARE SET OUT BELOW.



2. THE COMPLAINANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM MARCH 8TH, 1966 TO OCTOBER 19TH, 1967. BY THE RECOGNITION CLAUSE OF THE AGREEMENT THE RESPONDENT RECOGNIZES THE COMPLAINANT AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN ITS MANUFACTURING DIVISION IN THE COUNTY OF PEEL, SAVE AND EXCEPT OFFICE STAFF AND OTHER EXCLUSIONS WHICH ARE NOT HERE MATERIAL. THE RESPONDENT IS ALSO A PARTY TO A COLLECTIVE AGREEMENT WITH THE NORTHERN ELECTRIC OFFICE EMPLOYEES ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) EFFECTIVE FROM FEBRUARY 27TH, 1966 TO FEBRUARY 26TH, 1968. THE SCOPE CLAUSE OF THAT AGREEMENT COVERS ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING DIVISION IN THE COUNTY OF PEEL, WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL.

3. FOUR YEARS AGO THE RESPONDENT INTRODUCED A PROGRAM KNOWN AS VESTIBULE TRAINING FOR NEW EMPLOYEES. UNDER THIS PROGRAM NEW EMPLOYEES ARE GIVEN TRAINING IN THE SKILL THAT THEY WILL REQUIRE ON THE JOB, IN AN AREA SEPARATE AND APART FROM THE ACTUAL PRODUCTION OPERATIONS IN THE SHOP. UPON COMPLETION OF THE VESTIBULE TRAINING PERIOD, THE NEW EMPLOYEES ARE ASSIGNED, ACCORDING TO THEIR ACQUIRED SKILL, TO PRODUCTION OPERATIONS IN THE SHOP WHERE THEY CONTINUE FOR A FURTHER PERIOD OF TIME TO RECEIVE ON-THE-JOB-TRAINING.

4. WHEN THE PROGRAM WAS INITIATED THE RESPONDENT RECRUITED A NUMBER OF SHOP EMPLOYEES EXPERIENCED AS ON-THE-JOB-TRAINERS AND TRAINED THEM TO BE VESTIBULE TRAINERS. THESE EMPLOYEES ONLY WERE VESTIBULE TRAINERS IN THE PARTICULAR SKILL WHICH THEY POSSESSED AS A RESULT OF THEIR EXPERIENCE IN PRODUCTION. ORIGINALLY IT WAS CONTEMPLATED THAT WHEN THESE SHOP EMPLOYEES WERE NOT OCCUPIED IN VESTIBULE TRAINING THEY WOULD RETURN TO THEIR REGULAR OCCUPATIONS AS ON-THE-JOB-TRAINERS IN PRODUCTION. AS A RESULT, HOWEVER, OF THE LARGE NUMBER OF NEW EMPLOYEES CONTINUALLY BEING HIRED BY THE RESPONDENT DUE BOTH TO EXPANSION IN THE PRODUCTION OUTPUT AND TO THE HEAVY TURN-OVER IN PRODUCTION PERSONNEL, THE VESTIBULE TRAINERS SPENT VIRTUALLY ALL OF THEIR TIME PERFORMING IN THAT CAPACITY. UNTIL NOVEMBER OF 1966, THE VESTIBULE TRAINERS CONTINUED TO BE IN THE BARGAINING UNIT REPRESENTED BY THE COMPLAINANT AND TO RETAIN THEIR OCCUPATIONAL CLASSIFICATIONS AND THE CORRESPONDING HOURLY WAGE RATES SET FORTH IN THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT.

5. DURING THE FOUR YEARS THAT THE PROGRAM HAS BEEN IN OPERATION UPWARDS OF FORTY SHOP EMPLOYEES HAVE BEEN TRAINED AS AND HAVE PERFORMED THE FUNCTIONS OF VESTIBULE TRAINERS. ERIC LUCKING, THE MEMBER OF THE RESPONDENT'S MANAGEMENT RESPONSIBLE FOR EMPLOYEE TRAINING, TESTIFIED THAT DURING THE ENTIRE PERIOD ONLY FOUR CLERICAL EMPLOYEES HAVE, AT ONE TIME OR ANOTHER, BEEN VESTIBULE TRAINERS. THESE FOUR EMPLOYEES AT ALL TIMES REMAINED AS MEMBERS OF THE OFFICE AND CLERICAL BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION.

6. IN THE FALL OF 1966 THE RESPONDENT DECIDED TO REORGANIZE ITS VESTIBULE TRAINING PROGRAM. UNDER THE NEW SCHEME THE RESPONDENT PLANNED TO INCREASE THE NUMBER OF VESTIBULE TRAINERS AND TO TRAIN THEM AS INSTRUCTORS IN A NUMBER AS OPPOSED TO A SINGLE SKILL. THE RESPONDENT ALSO PLANNED TO HAVE THEM CARRY OUT THEIR DUTIES IN TRAINING NEW EMPLOYEES ON A FULL TIME BASIS. AS PART OF THE REORGANIZATION THE RESPONDENT CREATED A NEW OCCUPATIONAL CLASSIFICATION FOR VESTIBULE TRAINERS AND DESIGNATED IT AS A CLERICAL, SALARIED POSITION. THE EXPLANATION OFFERED BY THE RESPONDENT FOR THIS STEP WAS THAT BY THE ACQUISITION OF MULTI-SKILLS AS TRAINERS, THEIR JOB FUNCTIONS WOULD BRING THEM WITHIN THE AMBIT OF CLERICAL DUTIES AND RESPONSIBILITIES.

7. WHILE THE OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, AS STIPULATED IN THE ASSOCIATION AGREEMENT, WERE GIVEN THE FIRST OPPORTUNITY TO APPLY FOR APPOINTMENT TO THE NEW POSITION, NONE, IN FACT, MADE APPLICATION. UPON THE INSTIGATION OF THE RESPONDENT, HOWEVER, SHOP EMPLOYEES REPRESENTED BY THE COMPLAINANT, MOST OF WHOM HAD BEEN DOING ON-THE-JOB-TRAINING IN PRODUCTION, APPLIED FOR THE NEW POSITION. ON NOVEMBER 14TH, 1966 THE RESPONDENT TRANSFERRED 25 SHOP EMPLOYEES FROM THEIR OCCUPATIONAL CLASSIFICATIONS UNDER THE COLLECTIVE AGREEMENT WITH THE COMPLAINANT TO THE NEW CLASSIFICATION FOR VESTIBULE TRAINERS, WHICH CLASSIFICATION WAS DECLARED BY THE RESPONDENT TO FALL WITHIN THE SCOPE OF THE OFFICE AND CLERICAL BARGAINING UNIT REPRESENTED BY THE ASSOCIATION.

8. ALTHOUGH THE EVIDENCE IS NOT ENTIRELY CLEAR, WE DRAW THE INFERENCE THAT THOSE SHOP EMPLOYEES WHO WERE ALREADY ACTING IN THE CAPACITY OF VESTIBULE TRAINERS APPLIED FOR AND WERE TRANSFERRED INTO THE NEWLY DESIGNATED CLERICAL CLASSIFICATION OF VESTIBULE TRAINER. AGAIN, THE EVIDENCE IS NOT QUITE CLEAR, HOWEVER, IT WOULD APPEAR THAT NONE OF THE FOUR CLERICAL EMPLOYEES WHO AT ONE TIME OR ANOTHER HAD FULFILLED THE ROLE OF VESTIBULE TRAINERS WERE TRANSFERRED INTO THE NEW CLASSIFICATION.

9. ALL OF THE 25 SHOP EMPLOYEES WHO WERE TRANSFERRED INTO THE NEW CLASSIFICATION DESIGNATED BY THE RESPONDENT AS BEING CLERICAL, IN ACCORDANCE WITH A COMPULSORY CHECK OFF PROVISION IN THE ASSOCIATION AGREEMENT, SIGNED FORMS AUTHORIZING THE RESPONDENT TO DEDUCT MONTHLY DUES FROM THEIR SALARIES FOR ASSIGNMENT TO THE ASSOCIATION. THERE IS ALSO EVIDENCE THAT 18 OF THE 25 SHOP EMPLOYEES SIGNED APPLICATIONS FOR MEMBERSHIP IN THE ASSOCIATION.

10. THE COMPLAINANT FIRST RECEIVED OFFICIAL NOTICE OF THE TRANSFER OF THE 25 SHOP EMPLOYEES BY LETTERS FROM THE RESPONDENT DATED NOVEMBER 22ND AND 23RD, 1966. IN THE FACE OF OBJECTIONS REGISTERED BY THE COMPLAINANT AND MORE PARTICULARLY BECAUSE OF THE COMPLAINANT'S COMMENCEMENT OF THE INSTANT PROCEEDING BEFORE THE BOARD, THE RESPONDENT TRANSFERRED ALL OF THE 25 EMPLOYEES FROM THE NEW SALARIED CLASSIFICATION IN THE OFFICE AND CLERICAL UNIT BACK TO THEIR PREVIOUS HOURLY RATED CLASSIFICATION IN THE SHOP UNIT, PENDING A DETERMINATION BY THE BOARD OF THIS COMPLAINT.

11. WHILE THE RESPONDENT DID NOT CHALLENGE THE BOARD'S RIGHT TO ENTERTAIN THE COMPLAINT, IT DID DISPUTE THE BOARD'S AUTHORITY TO MAKE ANY DIRECTION ON THE REQUEST CONTAINED IN THE COMPLAINT. THE RESPONDENT SUBMITS THAT THE COMPLAINANT'S OBJECTION TO THE TRANSFER OF THE 25 SHOP EMPLOYEES IS PROPERLY A MATTER TO BE DEALT WITH UNDER THE GRIEVANCE AND ARBITRATION PROCEDURES SET OUT IN THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT. THE RESPONDENT FURTHER SUBMITS THAT AN ARBITRATION BOARD ESTABLISHED UNDER THE PROVISIONS OF THE AGREEMENT WAS COMPETENT AND HAD THE AUTHORITY TO RESOLVE THE ISSUE WITH RESPECT TO THE ASSIGNMENT OF WORK WHICH EXISTS BETWEEN THE PARTIES. ACCORDINGLY, HAVING REGARD TO THE PROVISIONS OF SUBSECTION (8) OF SECTION 66 OF THE LABOUR RELATIONS ACT, THE RESPONDENT ARGUES THAT THE BOARD IS WITHOUT JURISDICTION TO MAKE ANY DIRECTION IN THIS MATTER.

12. ALTERNATIVELY, IF THE BOARD WERE TO FIND THAT IT HAS JURISDICTION TO MAKE A DIRECTION IN THIS MATTER, THE RESPONDENT ARGUES THAT IT WAS THE RIGHT OF MANAGEMENT TO CREATE THE NEW OCCUPATIONAL CLASSIFICATION IN THE OFFICE AND CLERICAL UNIT AND TO TRANSFER EMPLOYEES FROM THE SHOP UNIT TO THAT POSITION WITHOUT REFERENCE TO THE COMPLAINANT. THE RESPONDENT DREW TO THE BOARD'S ATTENTION THE FACT THAT ALL OF THE JOB CLASSIFICATIONS UNDER THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT FROM WHICH THE SHOP EMPLOYEES WERE TRANSFERRED CONTINUED TO EXIST. THE RESPONDENT ALSO MADE REFERENCE TO THE EVIDENCE BEFORE THE BOARD THAT SUBSEQUENT TO THE TRANSFER OF THE 25 EMPLOYEES, THE RESPONDENT HAD PROCEEDED TO RECRUIT FROM AMONG THE SHOP EMPLOYEES PERSONS TO FILL THE POSITIONS OF ON-THE-JOB-TRAINERS IN PRODUCTION WHICH HAD BEEN VACATED BY THE SHOP EMPLOYEES WHO WERE TRANSFERRED TO THE NEW CLASSIFICATION DESIGNATED TO BE IN THE CLERICAL UNIT.

13. WITH REGARD TO THE QUESTION OF THE BOARD'S JURISDICTION RAISED BY THE RESPONDENT THE COMPLAINANT SUBMITS THAT THE ISSUE IN THIS CASE CONCERNS THE ASSIGNMENT OF WORK TO ANOTHER TRADE UNION, NAMELY THE ASSOCIATION. THE COMPLAINANT ASSERTS THAT ANY DETERMINATION MADE BY A BOARD OF ARBITRATION ESTABLISHED BY THE COMPLAINANT AND RESPONDENT UNDER THEIR COLLECTIVE AGREEMENT WOULD ONLY BE BINDING UPON THE TWO PARTIES TO THE AGREEMENT. NEVERTHELESS, THE COMPLAINANT ARGUES, THE ARBITRATION BOARD'S DECISION MAY WELL ADVERSELY AFFECT THE INTERESTS OR CLAIMS OF THE ASSOCIATION, WHICH CANNOT BE A PARTY TO THE PROCEEDING. THE COMPLAINANT MAINTAINS THAT THE ASSOCIATION QUITE PROPERLY COULD REFUSE TO COMPLY WITH THE DECISION OF THE BOARD OF ARBITRATION. IN OTHER WORDS, A BOARD OF ARBITRATION APPOINTED UNDER THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT COULD NOT RESOLVE THE PRESENT ISSUE. THE COMPLAINANT THEREFORE SUBMITS THAT THE COMPLAINT FALLS SQUARELY WITHIN THE WORDING OF SUBSECTION (1) OF SECTION 66 OF THE ACT AND THAT SUBSECTION (8) OF THE SAME SECTION CAN HAVE NO APPLICATION.

14. WITH RESPECT TO THE MERITS OF THE COMPLAINT, THE COMPLAINANT SUBMITS THAT THE WORK WHICH HAS BEEN ASSIGNED TO THE NEW OCCUPATIONAL CLASSIFICATION FOR VESTIBULE TRAINERS CLAIMED BY THE RESPONDENT TO BE IN THE CLERICAL UNIT REPRESENTED BY THE ASSOCIATION, BY THE VERY NATURE OF THE WORK, IS A PART OF THE SHOP PRODUCTION OPERATIONS OF THE RESPONDENT. THE COMPLAINANT EMPHASIZED THE EVIDENCE THAT EMPLOYEES DOING MORE HIGHLY SOPHISTICATED JOB TRAINING THAN THE TRAINING TO BE PERFORMED BY THOSE EMPLOYEES IN THE NEW CLASSIFICATION HAVE BEEN AND CONTINUE TO BE IN THE SHOP UNIT REPRESENTED BY THE COMPLAINANT. THE COMPLAINANT ARGUES THAT IF THE RESPONDENT IS PERMITTED TO ARBITRARILY TRANSFER THE WORK DONE BY THE 25 SHOP EMPLOYEES, WITH WHOM WE ARE HERE CONCERNED, OUT OF THE SHOP UNIT, THERE WILL BE NOTHING TO PREVENT THE RESPONDENT FROM TRANSFERRING OTHER TRAINING JOBS AND PERSONNEL OR OTHER OCCUPATIONAL CLASSIFICATIONS AND EMPLOYEES OUT OF THE SHOP UNIT. THE END RESULT, ASSERTS THE COMPLAINANT, WOULD BE TO GIVE THE RESPONDENT FREE LICENCE TO DISMEMBER THE COMPLAINANT'S BARGAINING UNIT. THE COMPLAINANT FURTHER SUBMITS THAT SINCE THE INCEPTION OF THE VESTIBULE TRAINING PROGRAM, WITH NEGLIGIBLE EXCEPTIONS, ALL OF THE EMPLOYEES OF THE RESPONDENT WHO HAVE FULFILLED THE FUNCTIONS OF VESTIBULE TRAINERS HAVE BEEN SHOP EMPLOYEES REPRESENTED BY THE COMPLAINANT. THE COMPLAINANT ACCORDINGLY REQUESTS THAT THE BOARD MAKE A DIRECTION THE WORK PERFORMED BY VESTIBULE TRAINERS BE ASSIGNED TO SHOP EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE COMPLAINANT.

15. THE ASSOCIATION INFORMED THE BOARD THAT SINCE THE RESPONDENT DESIGNATED THE WORK OF VESTIBULE TRAINING TO BE A CLERICAL POSITION FALLING WITHIN THE SCOPE OF ITS BARGAINING UNIT, THE ASSOCIATION WAS WILLING AND DID ACCEPT INTO MEMBERSHIP EMPLOYEES ASSIGNED TO THE NEW CLASSIFICATION. THE ASSOCIATION THEREFORE REQUESTS THAT THE BOARD MAKE A DIRECTION AS TO WHETHER VESTIBULE TRAINING FALLS WITHIN THE BARGAINING UNIT REPRESENTED BY THE COMPLAINANT OR THE BARGAINING UNIT REPRESENTED BY THE ASSOCIATION.

16. THE RESPONDENT IN THE INSTANT CASE CREATED A NEW JOB CLASSIFICATION OF VESTIBULE TRAINER WHICH IT DESIGNATED AS BEING A CLERICAL POSITION. THE RESPONDENT THEREUPON TRANSFERRED EMPLOYEES FROM THEIR CLASSIFICATIONS IN THE SHOP UNIT REPRESENTED BY THE COMPLAINANT TO THE NEW CLERICAL CLASSIFICATION WHICH THE RESPONDENT CLAIMS FALLS WITHIN THE SCOPE OF THE BARGAINING UNIT REPRESENTED BY THE ASSOCIATION. SUBSECTION (1) OF SECTION 66 OF THE ACT PROVIDES THAT THE BOARD MAY INQUIRE INTO A COMPLAINT THAT AN EMPLOYER WAS OR IS ASSIGNING WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION AND IT SHALL DIRECT WHAT ACTION, IF ANY, THE EMPLOYER SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE ASSIGNMENT OF WORK. SINCE UPON THEIR TRANSFER, THE RESPONDENT TREATED THE ASSOCIATION AS BEING THE BARGAINING AGENT FOR VESTIBULE TRAINERS, THE RESPONDENT PLACED ITSELF IN THE POSITION OF ASSIGNING THE WORK OF VESTIBULE TRAINING, WHICH PREVIOUSLY HAD BEEN DONE BY EMPLOYEES IN THE COMPLAINANT TRADE UNION, TO EMPLOYEES FOR WHOM, ACCORDING TO THE RESPONDENT, THE ASSOCIATION HAD BECOME THE BARGAINING AGENT. IN OUR OPINION, THE CONDUCT OF THE RESPONDENT FALLS WITHIN THE PURVIEW OF THE LANGUAGE OF SUBSECTION (1).



THE BOARD ACCORDINGLY FINDS THAT IT HAS THAT AUTHORITY TO MAKE ANY DIRECTION IT DEEMS APPROPRIATE WITH RESPECT TO THE INSTANT COMPLAINT, SUBJECT THAT IS, TO THE PROVISIONS OF SUBSECTION (8) OF SECTION 66.

17. SUBSECTION (8) OF SECTION 66 PROVIDES THAT NO COMPLAINT UNDER THE SECTION MAY BE MADE BY A TRADE UNION THAT HAS ENTERED INTO A COLLECTIVE AGREEMENT THAT CONTAINS A PROVISION REQUIRING THE REFERENCE OF ANY DIFFERENCE BETWEEN THEM ARISING OUT OF WORK ASSIGNMENT TO A TRIBUNAL MUTUALLY SELECTED BY THEM WITH RESPECT TO ANY DIFFERENCE AS TO WORK ASSIGNMENT THAT CAN BE RESOLVED UNDER THE COLLECTIVE AGREEMENT. ALTHOUGH AT THE BOARD HEARING THE ASSOCIATION DID NOT MAKE A SPECIFIC CLAIM TO THE WORK OF VESTIBULE TRAINING, WE FIND THAT THE ACCEPTANCE INTO MEMBERSHIP IN THE ASSOCIATION OF EMPLOYEES ASSIGNED TO THE NEW CLASSIFICATION IS TANTAMOUNT TO A CLAIM OF JURISDICTION TO THE WORK DONE BY THESE EMPLOYEES.

18. IN LIGHT OF THE ABOVE FINDING, BOTH THE ASSOCIATION AND THE COMPLAINANT ARE IN A POSITION TO MAKE THEIR RESPECTIVE CLAIMS TO JURISDICTION THE SUBJECT OF AN ARBITRATION PROCEEDING UNDER THEIR COLLECTIVE AGREEMENTS WITH THE RESPONDENT. ANY AWARD MADE BY A BOARD OF ARBITRATION ESTABLISHED UNDER EITHER OF THE COLLECTIVE AGREEMENTS, HOWEVER, WOULD ONLY BE BINDING ON THE PARTIES TO THAT PARTICULAR AGREEMENT. FOR INSTANCE, SHOULD A BOARD OF ARBITRATION APPOINTED UNDER THE COMPLAINANT'S COLLECTIVE AGREEMENT WITH THE RESPONDENT MAKE AN AWARD WHICH WAS IN CONFLICT WITH THE ASSOCIATION'S CLAIM, THE ASSOCIATION, NOT BEING A PARTY TO THE PROCEEDING, COULD NOT BE COMPELLED TO SUBSCRIBE TO THE AWARD. SIMILARLY, AN AWARD MADE BY AN ARBITRATION BOARD APPOINTED UNDER THE ASSOCIATION AGREEMENT WITH THE RESPONDENT WOULD NOT BE BINDING ON THE COMPLAINANT. IN OTHER WORDS, A BOARD OF ARBITRATION ESTABLISHED UNDER EITHER COLLECTIVE AGREEMENT IS WITHOUT THE AUTHORITY TO RESOLVE THE JURISDICTIONAL DISPUTE THAT EXISTS IN THE INSTANT CASE. ACCORDINGLY, WE FIND THAT SUBSECTION (8) DOES NOT DEPRIVE THE BOARD OF ITS JURISDICTION TO DEAL WITH THE COMPLAINT.

19. ALTHOUGH THE JOB DESCRIPTION FOR THE NEW CLASSIFICATION FOR VESTIBULE TRAINERS ESTABLISHED BY THE RESPONDENT WAS NOT FILED IN EVIDENCE THERE IS NO DISPUTE BETWEEN THE PARTIES THAT THE JOB PERFORMED BY VESTIBULE TRAINERS IS TO INSTRUCT NEW EMPLOYEES IN THE PRODUCTION SKILLS REQUIRED OF THEM IN THE SHOP. THE ONLY DISTINCTION BETWEEN THE WORK DONE BY VESTIBULE TRAINERS PRIOR TO THE CREATION OF THE NEW CLASSIFICATION AND THE WORK THAT THE RESPONDENT HAS ASSIGNED TO THE CLASSIFICATION IS THAT PREVIOUSLY EACH TRAINER ONLY INSTRUCTED IN A SINGLE PRODUCTION SKILL, WHEREAS UNDER THE NEW CLASSIFICATION THE TRAINERS WILL BE REQUIRED TO INSTRUCT IN MORE THAN ONE PRODUCTION SKILL. WITH VERY FEW EXCEPTIONS, THE WORK OF VESTIBULE TRAINERS HAS BEEN DONE BY SHOP EMPLOYEES IN THE COMPLAINANT'S BARGAINING UNIT SINCE THE VESTIBULE TRAINING PROGRAM WAS INSTITUTED. HOW IT CAME ABOUT THAT EVEN A FEW EMPLOYEES BELONGING TO THE CLERICAL UNIT DID SOME INSTRUCTING IN PRODUCTION SKILLS WAS NEVER EXPLAINED AT THE BOARD HEARING. THERE CERTAINLY IS NO EVIDENCE TO SUGGEST THAT THE WORK OF

VESTIBULE TRAINING IS IN ANY WAY CONNECTED WITH THE WORK PERFORMED BY CLERICAL EMPLOYEES IN THE ASSOCIATION'S BARGAINING UNIT. INDEED, ON THE CONTRARY, THE EVIDENCE MAKES IT QUITE CLEAR THAT THE WORK OF VESTIBULE TRAINING FORMS AN INTEGRAL AND ESSENTIAL PART OF THE PRODUCTION OPERATIONS OF THE RESPONDENT.

20. THE BOARD ACCORDINGLY DIRECTS THE RESPONDENT TO ASSIGN THE WORK OF VESTIBULE TRAINING TO EMPLOYEES WHO FALL WITHIN THE BARGAINING UNIT REPRESENTED BY THE COMPLAINANT.

DECISION OF BOARD MEMBER R. W. TEAGLE: JANUARY 25, 1967.

I DISSENT.

THE RESPONDENT IN THE INSTANT CASE CREATED A NEW JOB CLASSIFICATION OF VESTIBULE TRAINER IN THE OFFICE AND CLERICAL UNIT. THE WORK ASSIGNED TO THIS CLASSIFICATION, PRIOR TO ITS CREATION, WITH FEW EXCEPTIONS, HAD BEEN DONE BY SHOP EMPLOYEES AND ONLY SHOP EMPLOYEES WERE APPOINTED TO THE CLASSIFICATION AFTER ITS CREATION. WHILE THE ASSOCIATION WAS PREPARED TO ACCEPT THESE EMPLOYEES INTO MEMBERSHIP, IT DID SO BECAUSE THE RESPONDENT DECLARED THE CLASSIFICATION TO BE CLERICAL AND THEREFORE IT FELL WITHIN THE SCOPE OF THE BARGAINING UNIT REPRESENTED BY THE ASSOCIATION. ALTHOUGH AT THE HEARING, THE REPRESENTATIVES OF THE ASSOCIATION EXPRESSED A DESIRE FOR THE BOARD TO MAKE A DIRECTION IN THIS MATTER AND WHILE THERE IS SOME EVIDENCE THAT A FEW CLERICAL EMPLOYEES HAVE DONE VESTIBULE TRAINING, THE ASSOCIATION DID NOT CLAIM THAT THE JOB FUNCTIONS PERFORMED BY VESTIBULE TRAINERS IS OFFICE OR CLERICAL WORK WITHIN ITS JURISDICTION. IN OTHER WORDS, THIS IS NOT A SITUATION WHERE TWO TRADE UNIONS ARE MAKING RIVAL CLAIMS THAT A CERTAIN TYPE OF WORK FALLS EXCLUSIVELY WITHIN THEIR RESPECTIVE JURISDICTIONS. RATHER THE ESSENCE OF THE COMPLAINT HERE IS THAT CERTAIN EMPLOYEES, UNILATERALLY, HAVE BEEN TRANSFERRED BY THE RESPONDENT OUT OF THE BARGAINING UNIT REPRESENTED BY THE COMPLAINANT.

SUBSECTION (1) OF SECTION 66 OF THE ACT PROVIDES THAT THE BOARD MAY INQUIRE INTO A COMPLAINT THAT AN EMPLOYER WAS OR IS ASSIGNING WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION AND IT SHALL DIRECT WHAT ACTION, IF ANY, THE EMPLOYER SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE ASSIGNMENT OF WORK. IN MY OPINION, THE SUBSECTION CANNOT BE SO INTERPRETED AS TO VEST IN THE BOARD AUTHORITY TO INQUIRE INTO THE TYPE OF COMPLAINT MADE BY THE COMPLAINANT IN THE INSTANT CASE. THE WORDING OF THE SUBSECTION CLEARLY CONFINES THE BOARD'S RIGHT OF INQUIRY TO SITUATIONS WHERE THERE HAS BEEN AN ASSIGNING OF ~~WORK~~ TO EMPLOYEES IN ANOTHER TRADE UNION. THE WORDS OF THE SUBSECTION CANNOT BE GIVEN SUCH AN EXTENDED MEANING AS TO PERMIT THE BOARD TO INQUIRE INTO A COMPLAINT THAT AN EMPLOYER HAS TRANSFERRED EMPLOYEES FROM ONE BARGAINING UNIT TO ANOTHER BARGAINING UNIT. IN MY VIEW, THE FACT THAT THE FORMER SHOP EMPLOYEES SINCE THEIR TRANSFER TO THE NEW CLASSIFICATION ALL HAVE SIGNED CARDS AUTHORIZING THE RESPONDENT TO DEDUCT

MONTHLY DUES PAYABLE TO THE ASSOCIATION AND THE FACT THAT A MAJORITY OF THEM HAVE SIGNED APPLICATIONS FOR MEMBERSHIP IN THE ASSOCIATION CAN HAVE NO EFFECT. THE COMPLAINT IS NOT THAT WORK FALLING WITHIN THE JURISDICTION OF EMPLOYEES REPRESENTED BY THE COMPLAINANT IS BEING ASSIGNED TO FORMER SHOP EMPLOYEES WHO ARE NOW IN ANOTHER TRADE UNION. THE COMPLAINT RATHER IS THAT THESE SHOP EMPLOYEES WERE TRANSFERRED OUT OF THE COMPLAINANT'S BARGAINING UNIT IN THE FIRST INSTANCE.

IN THE NORMAL JURISDICTIONAL DISPUTE THE EMPLOYEES OF ONE TRADE UNION DISPLACE THE EMPLOYEES OF ANOTHER TRADE UNION AND THE DISPLACED EMPLOYEES ARE REMOVED FROM THE SITE OR PLACE OF EMPLOYMENT. THIS IS NOT THE EFFECT OF THE MAJORITY DECISION IN THE INSTANT CASE. THE INTENDED RESULT OF THE MAJORITY DECISION IS TO TELL THE EMPLOYEES DOING THE WORK WHAT UNION THEY SHALL BELONG TO.

IN SHORT THE REAL QUESTION IS WHETHER THE COMPANY HAS THE RIGHT TO UNILATERALLY TRANSFER EMPLOYEES FROM ONE BARGAINING UNIT TO ANOTHER OR SET UP A SEPARATE UNIT, THE BARGAINING RIGHTS FOR WHICH SHOULD BE DETERMINED BY CERTIFICATION.

FOR THE ABOVE REASONS I WOULD HAVE DISMISSED THE APPLICATION.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12513-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V.  
BOYLE-MIDWAY (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES  
(OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 10, 1967.

1. IN A LETTER TO THE BOARD, DATED DECEMBER 31ST, 1966, SUSAN THOMSON, SPOKESWOMAN FOR THE GROUP OF EMPLOYEES, OBJECTORS, STATES THAT THE EVIDENCE SHE GAVE AT THE HEARING WAS MISUNDERSTOOD OR THAT SHE MISUNDERSTOOD THE QUESTIONS PUT TO HER WITH RESPECT TO THE FORM OF THE PETITION AT THE TIME IT WAS SIGNED. THE BOARD ASSUMES THE LETTER TO BE A REQUEST FOR RECONSIDERATION OF ITS DECISION IN THIS MATTER, DATED DECEMBER 22ND, 1966, AND SO TREATS IT.

2. THE SWORN TESTIMONY OF SUSAN THOMSON WAS THAT, AT THE TIME IT WAS SIGNED, THE PETITION HAD NO HEADING AND THAT THE HEADING AS IT APPEARED AT THE HEARING WAS TYPED IN SUBSEQUENT TO THE AFFIXING OF THE SIGNATURES. BECAUSE OF THE IMPORTANCE IT ATTACHES TO SUCH MATTERS, THE BOARD QUESTIONED THE WITNESS ON THIS POINT ON MORE THAN ONE OCCASION DURING THE HEARING AND EACH TIME SHE REPLIED THAT THE HEADING WAS PUT ON THE PETITION AFTER IT WAS SIGNED. THE MATTER WAS DEALT WITH IN PARAGRAPHS 5 AND 6 OF THE BOARD'S DECISION. THE LETTER MAKES REFERENCE TO NO EVIDENCE OR ARGUMENT THAT WAS NOT AVAILABLE AT THE HEARING AND IN OUR VIEW THE BOARD'S DECISION OUGHT

NOT TO BE RECONSIDERED ON THE GROUNDS PROPOSED.

3. THE REQUEST OF SUSAN THOMSON IS ACCORDINGLY DENIED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

12439-66-U: ROY W. THOMPSON (COMPLAINANT) V. SCARBORO BOARD OF EDUCATION (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 17, 1967.

1. IN ITS DECISION DATED JANUARY 4TH, 1967, THE BOARD DISMISSED THE COMPLAINT PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE. IN ITS DECISION THE BOARD INDICATED THAT, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 65 OF THE ACT, IT WOULD NOT HEAR SUCH COMPLAINT WHERE AN ALTERNATIVE REMEDY, BY WAY OF THE GRIEVANCE AND ARBITRATION PROCEDURE UNDER A COLLECTIVE AGREEMENT, WAS AVAILABLE. THE BOARD HAS DEPARTED FROM THIS POLICY ONLY IN EXCEPTIONAL CASES, SUCH AS THOSE REFERRED TO IN THE BOARD'S DECISION. ONE SUCH CASE WAS THE PITT STREET HOTEL CASE, 63 C.L.L.C. 1149, WHERE IT WAS ALLEGED THAT THERE WAS COLLUSION BETWEEN THE TRADE UNION AND THE EMPLOYER. IN SUCH A CASE (HAD SUCH COLLUSION BEEN ESTABLISHED) IT WOULD HAVE BEEN UNREALISTIC TO CONSIDER THE GRIEVANCE PROCEDURE A REAL ALTERNATIVE TO THE PROCEEDING BEFORE THE BOARD UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

2. IT IS ESSENTIAL, OF COURSE, THAT ANY COMPLAINT BROUGHT UNDER SECTION 65 OF THE ACT BE A COMPLAINT THAT AN AGGRIEVED PERSON HAS BEEN DEALT WITH CONTRARY TO THE ACT. THE QUESTION OF "EXCEPTIONAL CIRCUMSTANCES" IS ONLY RELEVANT TO THE ISSUE WHERE THE BOARD'S PROCEDURE IS APT; THE MERITS OF THE CASE, HOWEVER, MUST RELATE TO THE ISSUE OF A DEALING WITH THE AGGRIEVED PERSON CONTRARY TO THE ACT. IN THE INSTANT CASE, IT DID NOT APPEAR THAT THE COMPLAINANT HAD ALLEGED THE SORT OF EXCEPTIONAL CIRCUMSTANCES WHICH WOULD LEAD THE BOARD TO CONSIDER THE CASE. THAT IS TO SAY, IT APPEARED THAT A REMEDY EXISTED UNDER THE COLLECTIVE AGREEMENT. THE BOARD, IN ITS DECISION, DID NOT PASS IN ANY WAY ON THE MERITS OF THE COMPLAINT.

3. IN A LETTER TO THE BOARD DATED JANUARY 6TH, 1967, THE COMPLAINANT STATES THAT HE DOES IN FACT ALLEGE COLLUSION BETWEEN THE EXECUTIVE OF THE SCARBORO BOARD OF EDUCATION AND LOCAL 149 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES. SUCH AN ALLEGATION WOULD BE CONSIDERED BY THE BOARD IN A CASE WHERE THE COMPLAINANT ALLEGED A DEALING WITH THE AGGRIEVED PERSON CONTRARY TO THE LABOUR RELATIONS ACT. IN THE INSTANT CASE, THE SUBSTANCE OF THE COMPLAINT IS AN ALLEGED WRONGFUL DISCHARGE NOT RELATED (AS FAR AS THE COMPLAINT REVEALS) TO ANY OF THE MATTERS WITH WHICH THE ACT DEALS. THIS BOARD HAS NO JURISDICTION TO DEAL WITH CASES OF



WRONGFUL DISCHARGE AS SUCH, RATHER, OUR JURISDICTION IN DISCHARGE CASES RELATES GENERALLY TO CASES OF DISCRIMINATION WITH RESPECT TO UNION MEMBERSHIP OR UNION ACTIVITY. THERE IS NOTHING IN THE COMPLAINT IN THIS CASE TO SUGGEST THAT THIS IS SUCH A CASE.

4. IT REMAINS THE OPINION OF THE BOARD THAT THE COMPLAINT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. PURSUANT TO SECTION 46(4)(c) OF THE BOARD'S RULES OF PROCEDURE, THE BOARD CONFIRMS ITS DECISION DATED JANUARY 4TH, 1967, DISMISSING THE COMPLAINT.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 39(2)

11635-66-M: SILVERWOOD DAIRIES, LIMITED, BRANTFORD BRANCH, AND SILVERWOOD EMPLOYEES' ASSOCIATION (BRANTFORD BRANCH) (JOINT APPLICANTS).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. A. MACLEAN FOR W. M. LAPIERRE AND MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647; J. P. SANDERSON, J. HOUSTON AND H. SWANSON FOR SILVERWOOD DAIRIES, LIMITED, BRANTFORD BRANCH; AND S. E. WYATT, Q.C., J. McMAHON AND L. PAYNE FOR SILVERWOOD EMPLOYEES' ASSOCIATION (BRANTFORD BRANCH).

DECISION OF THE BOARD: JANUARY 5, 1967.

APPLICATION BY W. M. LAPIERRE AND MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647, HEREINAFTER REFERRED TO AS "THE TEAMSTERS UNION", REQUESTING THAT THE BOARD REVIEW ITS DECISION OF APRIL 27, 1966 IN THIS MATTER, WHEREIN THE BOARD CONSENTED PURSUANT TO SECTION 39(3) OF THE LABOUR RELATIONS ACT TO THE EARLY TERMINATION OF A COLLECTIVE AGREEMENT BETWEEN SILVERWOOD DAIRIES LIMITED, HEREINAFTER REFERRED TO AS "THE DAIRY" AND SILVERWOOD EMPLOYEES' ASSOCIATION (BRANTFORD BRANCH), HEREINAFTER REFERRED TO AS "THE ASSOCIATION".

A JOINT APPLICATION UNDER SECTION 39(3) OF THE ACT WAS MADE ON APRIL 5, 1966 BY THE DAIRY AND THE ASSOCIATION. THE PROCESSING OF THE APPLICATION WAS DELAYED BECAUSE THE PARTIES HAD FAILED TO FILE, ALONG WITH THEIR APPLICATION, A COPY OF THE COLLECTIVE AGREEMENT. ON APRIL 14, 1966 THE REGISTRAR RECEIVED A COPY OF THE AGREEMENT AND, IN ACCORDANCE WITH THE USUAL PRACTICE IN SUCH CASES, HE FORWARDED TO THE DAIRY NOTICES OF THE APPLICATION FOR POSTING. THE NOTICES SET OUT THE FACT OF THE MAKING OF THE APPLICATION AND THEN PROCEEDED AS FOLLOWS:

ANY PERSON HAVING OBJECTION TO THE GRANTING OF SUCH CONSENT SHALL FILE THE SAME WITH THE BOARD, ON OR BEFORE THE 22ND DAY OF APRIL 1966.

IN DEFAULT OF FILING A NOTICE OF OBJECTION AS AFORESAID, THE BOARD MAY TAKE SUCH ACTION IN THE MATTER AS MAY APPEAR TO THE BOARD TO BE JUST.

THE REGISTRAR DIRECTED THAT THE NOTICES BE POSTED ON THE PREMISES OF THE COMPANY "IN SUCH CONSPICUOUS LOCATIONS THAT THEY ARE MOST LIKELY TO COME TO THE ATTENTION OF THE EMPLOYEES CONCERNED. THE NOTICES SHALL REMAIN SO POSTED FOR A PERIOD OF FIVE WORKING DAYS FROM THE POSTING THEREOF".

ON APRIL 25, 1966 THE REGISTRAR RECEIVED FROM THE BRANCH MANAGER OF THE DAIRY A DECLARATION OF POSTING IN WHICH THE BRANCH MANAGER STATED THAT COPIES OF THE NOTICE WERE POSTED AS DIRECTED ON APRIL 15 AND THAT THEY HAD BEEN KEPT POSTED FOR FIVE DAYS. NO OBJECTION TO THE GRANTING OF CONSENT HAVING BEEN RECEIVED, THE BOARD, ON APRIL 27, 1966, CONSENTED TO THE EARLY TERMINATION OF THE AGREEMENT.

THE COLLECTIVE AGREEMENT TO WHICH THE PROCEEDING RELATED WAS DATED JUNE 4, 1964 AND WAS DUE TO TERMINATE ON JUNE 3, 1966. THE "OPEN SEASON" FOR AN APPLICATION FOR CERTIFICATION BY ANY UNION SEEKING TO REPLACE THE INCUMBENT ASSOCIATION WOULD THEREFORE HAVE BEEN, FOR THE PURPOSES OF WHAT FOLLOWS, THE TWO-MONTH PERIOD IMMEDIATELY PRECEDING JUNE 3, 1966, BUT FOR THE CONSENT AND THE FURTHER FACT THAT THE DAIRY AND THE ASSOCIATION ENTERED INTO A NEW AGREEMENT. ON MAY 10, I.E., WELL WITHIN THE "OPEN SEASON" UNDER THE AGREEMENT THAT HAD BEEN TERMINATED, THE TEAMSTERS UNION APPLIED FOR CERTIFICATION. THE RESPONDENT COMPANY IN THAT CASE, THE DAIRY, PLEADED THE NEW AGREEMENT AS A BAR TO THE APPLICATION. AT THE HEARING OF THAT APPLICATION ON JUNE 2, THE TEAMSTERS UNION REQUESTED THAT THE DIVISION OF THE BOARD BEFORE WHOM THE CERTIFICATION APPLICATION WAS BEING HEARD, CONSISTING OF MESSRS. J. H. BROWN, E. BOYER AND H. F. IRWIN, SHOULD REVIEW THE BOARD'S DECISION OF APRIL 27, 1966. THAT DIVISION OF THE BOARD REFUSED TO ADOPT SUCH A COURSE BECAUSE AS MR. BROWN, WHO PRESIDED AT THE HEARING POINTED OUT, THE BOARD HAD BEEN DIFFERENTLY CONSTITUTED WHEN THE APPLICATION FOR EARLY TERMINATION WAS DEALT WITH AND DISPOSED OF. THE TEAMSTERS UNION THEREUPON REQUESTED LEAVE TO WITHDRAW ITS CERTIFICATION APPLICATION. HOWEVER, THE BOARD DISMISSED THE APPLICATION FOLLOWING ITS USUAL PRACTICE, HAVING REGARD TO THE STAGE AT WHICH THE TEAMSTERS UNION MADE ITS REQUEST TO WITHDRAW THE CERTIFICATION APPLICATION. THE FOLLOWING DAY, JUNE 3, 1966, THE INSTANT REQUEST WAS MADE THAT THE BOARD RECONSIDER ITS DECISION OF APRIL 27, 1966. THIS REQUEST WAS LISTED FOR HEARING AND A HEARING WAS HELD TO AFFORD THE PARTIES AN OPPORTUNITY TO SHOW CAUSE AS TO WHETHER MR. LAPIERRE AND THE TEAMSTERS UNION WERE ENTITLED TO THE RELIEF THEY WERE SEEKING. UNFORTUNATELY, BEFORE A DECISION WAS ARRIVED AT MR. G. RUSSELL HARVEY, WHO WAS A MEMBER OF THE DIVISION OF THE BOARD THAT HEARD THE ARGUMENT, PASSED AWAY. COUNSEL FOR THE PARTIES HAVE NOW (NOVEMBER 16, 1966) FILED WITH THE BOARD THE FOLLOWING DOCUMENT:

28TH OCTOBER, 1966

A.M. BRUNSKILL ESQ.,  
REGISTRAR,  
ONTARIO LABOUR RELATIONS BOARD,  
8 YORK STREET,  
TORONTO 1,  
ONTARIO.

RE: SILVERWOOD DAIRIES LIMITED AND THE  
MILK AND BREAD DRIVERS, DAIRY EMPLOYEES,  
CATERERS AND ALLIED EMPLOYEES, LOCAL  
UNION No. 647 AND THE SILVERWOOD EMPLOYEES'  
ASSOCIATION AND MR. W.M. LAPIERRE - BOARD  
FILE No. 11635-66-M

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DEAR SIR:

THE PARTIES TO THIS APPLICATION FOR RECONSIDERATION OF THE BOARD'S DECISION OF APRIL 27TH, 1966 (WHEREIN THE BOARD GRANTED A REQUEST FOR EARLY TERMINATION OF A COLLECTIVE AGREEMENT BETWEEN SILVERWOOD DAIRIES LIMITED, BRANTFORD BRANCH AND THE SILVERWOOD EMPLOYEES' ASSOCIATION) DO BY THEIR UNDERSIGNED SOLICITORS HEREBY AGREE AS FOLLOWS:

1. THE CHAIRMAN OF THE ONTARIO LABOUR RELATIONS BOARD IS HEREBY AUTHORIZED TO APPOINT A NEW EMPLOYEES' REPRESENTATIVE IN THE PLACE AND STEAD OF THE LATE RUSSELL HARVEY WHO PRESIDED ON THE DIVISION OF THE BOARD WHICH PARTICIPATED IN THE BOARD'S DECISION OF APRIL 27TH, 1966, AND AT THE HEARING OF THIS APPLICATION FOR RECONSIDERATION ON AUGUST 11TH, 1966, FOR ALL PURPOSES OF THESE PROCEEDINGS;
2. THE REMAINING MEMBERS OF THE DIVISION OF THE BOARD, NAMELY, PROFESSOR FINKELMAN, AS CHAIRMAN, AND BOARD MEMBER R.W. TEAGLE, ARE HEREBY AUTHORIZED TO MEET WITH SUCH NEWLY APPOINTED EMPLOYEES' REPRESENTATIVE AND TO COMMUNICATE TO HIM, IN THE ABSENCE OF THE PARTIES, ALL MATTERS PERTAINING TO THE PROCEEDINGS, ARGUMENTS, AND EVIDENCE ADDUCED WHICH LED TO THE DECISION OF THE BOARD OF APRIL 27TH, 1966. AND WHICH WERE ADVANCED AT THE HEARING OF THE APPLICATION FOR RECONSIDERATION ON AUGUST 11TH, 1966;

3. THE NEWLY-CONSTITUTED DIVISION OF THE BOARD IS FULLY AUTHORIZED TO DECIDE AND DETERMINE THE MERITS OF THIS APPLICATION FOR RECONSIDERATION TO THE SAME EXTENT AND WITH THE SAME AUTHORITY, POWERS AND JURISDICTION AS THE ORIGINAL DIVISION OF THE BOARD WHICH PARTICIPATED IN THE DECISION OF APRIL 27TH, 1966 AND IN THE HEARING OF THE APPLICATION FOR RECONSIDERATION ON AUGUST 11TH, 1966;

4. ALL THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL OBJECTIONS THAT THEY MIGHT OTHERWISE HAVE ARISING OUT OF THE SAID APPOINTMENT AND PROCEDURE ADOPTED HEREIN TO THE AUTHORITY AND JURISDICTION OF THE NEWLY-CONSTITUTED DIVISION OF THE BOARD TO ENTERTAIN AND TO DECIDE AND FINALLY DETERMINE ALL MATTERS OF FACT AND LAW PERTAINING TO THE MERITS OF THIS APPLICATION FOR RECONSIDERATION AND ANY ACTION DECIDED TO BE TAKEN AS A RESULT THEREOF WITH RESPECT TO THE DECISION OF APRIL 27TH, 1966.

W.M. LAPIERRE AND THE MILK AND  
BREAD DRIVERS, DAIRY EMPLOYEES,  
CATERERS AND ALLIED EMPLOYEES  
LOCAL UNION No. 647 BY THEIR  
SOLICITORS,  
JOLLIFFE, LEWIS & OSLER  
PER: "L. A. MACLEAN"

THE SILVERWOOD DAIRIES LIMITED  
BRANTFORD BRANCH, BY ITS  
SOLICITORS,  
MATHEWS, DINSDALE & CLARK  
PER: "JOHN P. SANDERSON"

THE SILVERWOOD EMPLOYEES'  
ASSOCIATION BY ITS SOLICITORS  
PENNELL, WYATT & PURCELL  
PER: "S.E. WYATT"

HAVING REGARD TO THE CONSENT OF THE PARTIES, THE CHAIRMAN HAS "APPOINTED" BOARD MEMBER E. BOYER IN THE PLACE AND STEAD OF THE LATE MR. G. RUSSELL HARVEY AND, FURTHER HAVING REGARD TO THE CONSENT OF THE PARTIES, THE CHAIRMAN AND BOARD MEMBER R. W. TEAGLE HAVE NOW COMMUNICATED TO MR. BOYER "ALL MATTERS PERTAINING TO THE PROCEEDINGS, ARGUMENTS, AND EVIDENCE ADDUCED WHICH LED TO THE DECISION OF THE BOARD OF APRIL 27TH, 1966, AND WHICH WERE ADVANCED AT THE HEARING OF THE APPLICATION FOR RECONSIDERATION ON AUGUST 11TH, 1966."



ONE OF THE ISSUES RAISED IN THE COURSE OF THE ARGUMENT ON THE REQUEST FOR RECONSIDERATION WAS THAT THE REGISTRAR HAD SENT OUT TWO COPIES OF THE NOTICE OF THE APPLICATION FOR EARLY TERMINATION TO BE POSTED BY THE DAIRY FOR THE ATTENTION OF THE EMPLOYEES, THAT ONLY ONE NOTICE WAS POSTED AND THAT IN A PLACE OTHER THAN WHERE NOTICES ARE USUALLY POSTED, WITH THE RESULT THAT A CERTAIN GROUP OF EMPLOYEES RECEIVED NO NOTICE.

THERE IS NO EXPRESS PROVISION IN THE BOARD'S RULES OF PROCEDURE THAT REQUIRES THE POSTING OF A NOTICE TO EMPLOYEES WITH RESPECT TO AN APPLICATION FOR EARLY TERMINATION OF A COLLECTIVE AGREEMENT. ANY REQUIREMENT AS TO POSTING IS THEREFORE GOVERNED BY SECTION 62 (NOW SECTION 61) OF THE BOARD'S RULES OF PROCEDURE WHICH DECLARES THAT PROCEDURE NOT PRESCRIBED IS GOVERNED BY ANALOGY. IT MAY NOT BE AMISS TO POINT OUT AS AN ASIDE THAT, APART FROM ONTARIO, THE POSTING OF NOTICES OF APPLICATIONS SO AS TO BRING THEM TO THE ATTENTION OF EMPLOYEES CONCERNED IS MANDATORY ONLY IN MANITOBA, NEW BRUNSWICK AND NOVA SCOTIA. UNDER THE RULES MADE UNDER THE FEDERAL INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT AND THE RELEVANT LEGISLATION IN BRITISH COLUMBIA AND NEWFOUNDLAND, POSTING IS A MATTER THAT RESTS IN THE DISCRETION OF THE LABOUR RELATIONS BOARD. IN ALBERTA, SASKATCHEWAN, QUEBEC AND PRINCE EDWARD ISLAND, THE RULES OF PROCEDURE DO NOT CALL FOR THE POSTING OF ANY NOTICE. IT WAS NOT CONTENDED BEFORE US THAT EACH INDIVIDUAL EMPLOYEE MUST RECEIVE PERSONAL NOTICE OF THE APPLICATION. IN FACT, IT WOULD BE ABSOLUTELY IMPOSSIBLE FOR THE BOARD TO CARRY ON ITS ACTIVITIES WITH ANY DEGREE OF EFFICIENCY IF PERSONAL NOTICE WERE REQUIRED. THUS, FOR EXAMPLE, IN THE INTERNATIONAL NICKEL COMPANY CASE, (1965) C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,066, A CERTIFICATION APPLICATION, THERE WERE OVER 15,000 EMPLOYEES ACCORDING TO THE LISTS FILED BY THE RESPONDENT COMPANY AS COMPRISING THE BARGAINING UNIT REQUESTED BY THE APPLICANT UNION. OF THIS NUMBER, THE NAMES OF 2726 PERSONS APPEARED ON SCHEDULE D, I.E., THE LIST OF EMPLOYEES WHO WERE NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. FROM OUR EXPERIENCE OVER MANY YEARS, IT IS FAIR ASSUMPTION THAT QUITE A NUMBER OF THE EMPLOYEES WHOSE NAMES APPEARED ON SCHEDULE D WERE NOT AT WORK ON THE DATE WHEN THE NOTICES OF APPLICATION (FORM 5) WERE POSTED OR UNTIL AFTER THE TERMINAL DATE FOR THE APPLICATION HAD ELAPSED. IT IS SCARCELY NECESSARY TO SPELL OUT THE CHAOTIC CONDITION THAT WOULD OBTAIN IF EVERY PERSON WHO WAS ABSENT FROM WORK DURING THE CRITICAL PERIOD, I.E., BETWEEN THE DATE OF POSTING AND THE TERMINAL DATE, AND WHO DID NOT ACTUALLY SEE THE NOTICE, WERE ENTITLED TO COME FORWARD AT A LATER DATE AND ASK THE BOARD TO RECONSIDER ITS DECISION IN THE LIGHT OF ANY OBJECTION THAT SUCH A PERSON MIGHT HAVE. THERE WOULD BE NO FINALITY TO PROCEEDINGS BEFORE THE BOARD AND THE RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES WOULD BE IN A CONTINUAL STATE OF UPHEAVAL. SURELY ALL THAT IS REQUIRED OF THE BOARD IS THAT IT TAKE REASONABLE STEPS TO BRING TO THE ATTENTION OF THE EMPLOYEES AFFECTED THE FACT THAT A CERTAIN APPLICATION IS PENDING BEFORE THE BOARD. SEE REGINA V. CANADA LABOUR RELATIONS BOARD, EX PARTE MARTIN ET AL., [1966] 2 O.R. 684, C.C.H. CANADIAN LABOUR LAW

REPORTER, ¶14,144. IN SO FAR AS THE REQUEST HERE UNDER CONSIDERATION IS CONCERNED, IT IS OUR OPINION THAT AN OPPORTUNITY SHOULD BE AFFORDED TO LAPIERRE TO PRESENT EVIDENCE AS TO HIS CLAIM CONCERNING THE ADEQUACY OF THE POSTING OF THE NOTICE OF THE APPLICATION, SO THAT WE MAY BE ABLE TO DETERMINE WHETHER THE NOTICE THAT WAS GIVEN DID OR DID NOT SATISFY THE PRINCIPLES SET OUT ABOVE. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR HEARING FOR THE PURPOSE INDICATED.

IN VIEW OF THE FOREGOING DIRECTION, WE REFRAIN FROM DEALING WITH THE OTHER MATTERS RAISED BY COUNSEL FOR LAPIERRE AND THE TEAMSTERS UNION IN CONNECTION WITH THIS APPLICATION.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 79(2)

11892-66-M: LOCAL 545, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT)  
V. TOWNSHIP OF SCARBOROUGH (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER  
R. W. TEAGLE: JANUARY 31, 1967.

1. THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER, DATED SEPTEMBER 1ST, 1966, IN WHICH THE APPLICATION WAS DISMISSED. COUNSEL FOR THE APPLICANT HAS, IN HIS REQUEST, MADE LENGTHY AND SEARCHING ARGUMENTS WITH RESPECT TO THE BOARD'S JURISDICTION AND THE EXERCISE OF ITS DISCRETION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. IN HIS REQUEST FOR REVIEW, COUNSEL FOR THE APPLICANT REFERS TO PARAGRAPH 3 OF THE BOARD'S ENDORSEMENT, IN WHICH THE BOARD STATED, "THE COLLECTIVE AGREEMENT CURRENTLY IN EFFECT BETWEEN THE PARTIES EXPRESSLY EXCLUDES FROM THE BARGAINING UNIT ALL OF THE PERSONS WITH RESPECT TO WHOM THE APPLICANT NOW SEEKS THE BOARD'S RULING". BY THAT STATEMENT THE BOARD INTENDED TO REFER TO THE COLLECTIVE AGREEMENT CONTAINING THE RECOGNITION CLAUSE IN WHICH THE SCOPE OF THE BARGAINING UNIT PRESENTLY REPRESENTED BY THE APPLICANT WAS DELINEATED. THE BOARD DID NOT INTEND TO DENY THAT THE APPLICANT HAD, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT, RAISED THE QUESTION AS TO WHETHER CERTAIN PERSONS REFERRED TO IN THIS APPLICATION WERE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. IN DISMISSING THE APPLICATION, THE BOARD STATED, "IT IS CLEAR THAT THE PURPOSE OF THE APPLICATION IS TO PAVE THE WAY FOR VOLUNTARY RECOGNITION OF THE APPLICANT AS ~~B~~BARGAINING AGENT FOR A GROUP OF EMPLOYEES FOR WHOM IT IS NOT NOW THE BARGAINING AGENT". IN OUR VIEW, IT WOULD NOT BE PROPER FOR THE APPLICANT TO MAKE USE OF PROCEEDINGS OF THIS NATURE IN ORDER TO ENHANCE ITS OWN BARGAINING POSITION. WE WOULD MAKE IT CLEAR, HOWEVER, THAT THE BOARD WOULD ENTER-TAIN AN APPLICATION OF THIS NATURE WHERE BOTH PARTIES SOUGHT OUR DETERMINATION OF THE ISSUE.

3. THE ARGUMENTS RAISED BY COUNSEL FOR THE APPLICANT ARE ALL ARGUMENTS WHICH MIGHT HAVE BEEN MADE AT THE HEARING OF THIS MATTER. IN MOST CASES, THESE ARGUMENTS WERE MADE, AND HAVE BEEN CONSIDERED BY THE BOARD. THE APPLICANT'S REQUEST FOR REVIEW OF THE BOARD'S DECISION IS DENIED.

DECISION OF BOARD MEMBER E. BOYER: JANUARY 31, 1967.

I HAVE CONSIDERED THE BOARD'S ENDORSEMENT OF THE RECORD DATED SEPTEMBER 1ST, 1966, AND THE ARGUMENTS ADVANCED BY COUNSEL FOR THE APPLICANT IN HIS REQUEST FOR REVIEW. IT IS NOT NECESSARY FOR ME, IN THESE PROCEEDINGS, TO INDICATE AGREEMENT OR DISAGREEMENT WITH THE DECISION REACHED BY THE BOARD AT THAT TIME. THE APPLICANT HAS NOT REFERRED TO ANY EVIDENCE OR ARGUMENTS NOT AVAILABLE TO IT AT THE TIME OF THE HEARING, AND I CONCUR IN THE DENIAL OF THE REQUEST FOR REVIEW.

#### ERRATUM

PARAGRAPH 3 OF THE BOARD'S DECISION IN CASE 12164-66-R: A.K. PENNER AND SONS LTD., WHICH WAS REPORTED IN THE OCTOBER 1966 MONTHLY REPORT AT PAGES 493-495, SHOULD HAVE BEEN AS FOLLOWS:

3. THE PROBLEM OF "CRAFT" VERSUS "ALL EMPLOYEE" UNITS PRESENTS MORE DIFFICULTIES. IT IS CLEAR THAT IN THE PAST THE BOARD HAS GRANTED ALL EMPLOYEE UNITS IN CONSTRUCTION INDUSTRY CASES TO, INTER ALIA, THE THE PRESENT APPLICANT. SEE FOR EXAMPLE, SAVILLE CONSTRUCTION COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER, 1964, P. 305 AND R. E. LEE CONSTRUCTION Co. LTD., O.L.R.B. MONTHLY REPORT, SEPTEMBER, 1965, P. 395. IT IS ALSO TRUE THAT THE BOARD HAS REFUSED TO GRANT SUCH A UNIT WHERE TRADES INTENDED TO BE EMPLOYED IN THE FUTURE WERE NOT EMPLOYED ON THE DATE OF THE MAKING OF THE APPLICATION. SEE MANNIX Co. LTD., O.L.R.B. MONTHLY REPORT, JANUARY, 1965, P. 526. IN THE LATTER CASE, THE BOARD INDICATED THAT THE LIKELIHOOD OF WORK ASSIGNMENT OR JURISDICTIONAL DISPUTES WAS A FACTOR WHICH OUGHT TO BE TAKEN INTO CONSIDERATION IN DETERMINING THE APPROPRIATE BARGAINING UNIT. THIS FACTOR, IN OUR VIEW, ASSUMES AN EVEN GREATER SIGNIFICANCE NOW THAT THE BOARD HAS BEEN GIVEN POWERS TO DEAL WITH WORK ASSIGNMENT DISPUTES. IN FUTURE, THEREFORE, WHERE A UNION WHICH NORMALLY ORGANIZES ALONG CRAFT LINES SEEKS AN ALL EMPLOYEE BARGAINING UNIT ONE OF THE FACTORS TO BE CONSIDERED IS THE LIKELIHOOD OF THE GRANTING OF SUCH A UNIT LEADING TO A WORK ASSIGNMENT OR JURISDICTIONAL DISPUTE. WE SHOULD PERHAPS ADD AT THIS POINT THAT WE AGREE WITH THE APPLICANT'S SUBMISSION THAT SECTION 90(B) OF THE LABOUR RELATIONS ACT IS NOT SO WORDED AS TO PRECLUDE A TRADE UNION WHICH NORMALLY ORGANIZES ALONG CRAFT LINES FROM APPLYING FOR AN ALL EMPLOYEE UNIT IN A CONSTRUCTION INDUSTRY APPLICATION.

STATISTICAL TABLES FOR JANUARY 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		JANUARY 1ST 1967	10 MONTHS OF 1966-67	FISCAL YEAR 1965-66
I.	CERTIFICATION	66	772	817
II.	DECLARATION TERMINATING BARGAINING RIGHTS	5	35	50
III.	DECLARATION OF SUCCESSOR STATUS	3	12	24
IV.	DECLARATION THAT STRIKE UNLAWFUL	2	28	46
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	4
VI.	CONSENT TO PROSECUTE	10	80	83
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	11	93	90
VIII.	MISCELLANEOUS	<u>2</u>	<u>53</u>	<u>45</u>
TOTAL		<u>99</u>	<u>1074</u>	<u>1159</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		JANUARY 1ST 1967	10 MONTHS OF 1966-67	FISCAL YEAR 1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		75	775	980



TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR

RELATIONS BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	JANUARY 1967	1ST 10 MONTHS OF 1966-67	FISCAL YEAR 1965-66
I. CERTIFICATION	54	797	826
II. DECLARATION TERMINATING BARGAINING RIGHTS	3	29	53
III. DECLARATION OF SUCCESSOR STATUS	1	10	19
IV. DECLARATION THAT STRIKE UNLAWFUL	6	27	43
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	4
VI. CONSENT TO PROSECUTE	12	66	75
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	8	100	5
VIII. MISCELLANEOUS	<u>10</u>	<u>62</u>	<u>25</u>
TOTAL	<u>94</u>	<u>1092</u>	<u>1120</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>JANUARY 1ST 10 MONTHS OF FISCAL YEAR</u>		
		<u>1967</u>	<u>1966-67</u>	<u>1965-66</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	1	4	7
	DISMISSED	2	2	4
	WITHDRAWN	<u>3</u>	<u>21</u>	<u>32</u>
	TOTAL	<u>6</u>	<u>27</u>	<u>43</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	4
	WITHDRAWN	<u>-</u>	<u>1</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>1</u>	<u>4</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	7	29
	DISMISSED	2	11	14
	WITHDRAWN	<u>10</u>	<u>48</u>	<u>32</u>
	TOTAL	<u>12</u>	<u>66</u>	<u>75</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	JANUARY 1ST 10 MTHS FISCAL YR. 1967	1966-67	1965-66	JANUARY 1ST 10 MTHS FISCAL YR. 1967	1966-67	1965-66
I. <u>CERTIFICATION</u>						
GRANTED	41	587	611	2091	1766	16690
DISMISSED	9	142	144	773	11077	26251
WITHDRAWN	<u>4</u>	<u>68</u>	<u>71</u>	<u>16</u>	<u>941</u>	<u>3412</u>
TOTAL	<u>54</u>	<u>797</u>	<u>826</u>	<u>2880</u>	<u>13784</u>	<u>46353</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	2	17	25	59	553	1435
DISMISSED	-	11	25	-	279	765
WITHDRAWN	<u>1</u>	<u>1</u>	<u>3</u>	<u>203</u>	<u>203</u>	<u>119</u>
TOTAL	<u>3</u>	<u>29</u>	<u>53</u>	<u>262</u>	<u>1035</u>	<u>2319</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE V.

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED  
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY 1ST 1967	10 MONTHS FISCAL YEAR 1966-67	1965-66
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	16	23
POST-HEARING VOTE	3	32	28
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	9	6
POST-HEARING VOTE	4	52	32
BALLOTS NOT COUNTED	-	-	3
TOTAL	<u>9</u>	<u>109</u>	<u>92</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED  
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY 1ST 1967	10 MONTHS FISCAL YEAR 1966-67	1965-66
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSECESSFUL	<u>2</u>	<u>14</u>	<u>20</u>
TOTAL	<u>2</u>	<u>18</u>	<u>21</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.





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ONTARIO

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING FEBRUARY 1967

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

NO VOTE CONDUCTED

12353-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CANADIAN ACME SCREW & GEAR LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, ASSISTANT SUPERVISORS, CHIEF INSPECTORS, TECHNICIANS, TECHNICIAN TRAINEES, METALLURGISTS, SALESMEN, SALES REPRESENTATIVES, PURCHASING CO-ORDINATOR, ADMINISTRATIVE ASSISTANT TO DEPARTMENT HEADS, ADMINISTRATIVE ASSISTANT TO PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, SECRETARIES TO DEPARTMENT HEAD, SECRETARY TO PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, COST ANALYST, PAYMASTER, SALARIED PAYROLL SECTION, PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, NURSES, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (130 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 872).

12475-66-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. BP CANADA LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT 165 BURTON STREET, HAMILTON, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES).

(CERTIFIED).

UNIT #2: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT 165 BURTON STREET, HAMILTON, SAVE AND EXCEPT SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT." (2 EMPLOYEES IN THE UNIT).

(DISMISSED).

12580-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. BOARD OF PARK MANAGEMENT OF THE CITY OF WELLAND (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

12591-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. FRANCON (1966) LIMITED (RESPONDENT). v. TEAMSTERS' LOCAL UNION No. 230. READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS. I.B. OF T. (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING CONSTRUCTION IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE VERY SPECIAL CIRCUMSTANCES OF THIS CASE).

(SEE INDEXED ENDORSEMENT PAGE 880 ).

12611-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. BEAVER UNDERGROUND STRUCTURES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

12615-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. ELLIS-DON LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (2 EMPLOYEES IN THE UNIT).

12624-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE CITY OF WELLAND (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT CITY CLERK, DEPUTY CITY CLERK, CITY TREASURER, DEPUTY CITY TREASURER, CITY ENGINEER, DEPUTY CITY ENGINEER, PROFESSIONAL ENGINEER (ENGINEERING DEPARTMENT), ASSISTANT TO THE CITY ENGINEER (TECHNOLOGIST), WORKS SUPERINTENDENT, ASSESSMENT COMMISSIONER, CITY SOLICITOR, CITY PLANNING DIRECTOR, SOCIAL SERVICES DIRECTOR, DEPUTY SOCIAL SERVICES DIRECTOR, DIRECTOR OF RECREATION, ASSISTANT DIRECTOR OF RECREATION, OFFICE MANAGER (ASSESSMENT DEPARTMENT), CONFIDENTIAL SECRETARIES TO THE MAYOR, CITY ENGINEER AND CITY SOLICITOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ALL PERSONS COVERED BY ANY SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (U.E.) LOCAL 517." (41 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12631-66-R: TEAMSTERS INTERNATIONAL UNION LOCAL 990, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, (APPLICANT) V. GEORGE ARMSTRONG CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES).

12634-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DRIAM PIPE (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

12635-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. AUTOMATIC COIL MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (63 EMPLOYEES IN THE UNIT).

12636-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RADIO COMPONENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (74 EMPLOYEES IN THE UNIT).

12638-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. LINDEN ENGINEERING SYSTEMS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

12640-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 493 (APPLICANT) V. W. A. McDougall Ltd., GENERAL CONTRACTORS, NORTHERN DIVISION, NORTH BAY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).



12641-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) v. C. A. PITTS GENERAL CONTRACTOR LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND IN THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURGH IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

12642-66-R: TEXTILE WORKERS UNION OF AMERICA, CLC., AFL-CIO (APPLICANT) v. ESSENTIALS MANUFACTURING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12644-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 837 (APPLICANT) v. GREENSPOON BROS. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (24 EMPLOYEES IN THE UNIT).

12648-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. SMITH & STONE LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, NURSE, SECURITY GUARDS, EMPLOYEES OF THE PERSONNEL DEPARTMENT, SECRETARY TO THE EXECUTIVE VICE-PRESIDENT, SECRETARY TO THE PLANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (47 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12649-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. PLAX CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, NURSE, SECURITY GUARDS, EMPLOYEES OF THE PERSONNEL DEPARTMENT, SECRETARY TO THE EXECUTIVE VICE-PRESIDENT, SECRETARY TO THE PLANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT

AND THE RESPONDENT." (10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12652-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 506 (APPLICANT) V. STORRAR LIMITED. (BRICK DIVISION) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

12655-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

12658-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. K - W BUILDING & CONSTRUCTION TRADES UNION CLUB (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12660-66-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 904 OF THE INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS (APPLICANT) V. A. EARLE HODGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FALCONBRIDGE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT PERSONS TEMPORARILY EMPLOYED DURING SCHOOL VACATION PERIODS AND DURING THE CHRISTMAS SEASON." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12661-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (CLC) (AFL-CIO) LOCAL 1250 (APPLICANT) V. J. A. SAUVE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12665-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ELECTRIC REDUCTION COMPANY OF CANADA, L.D. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ITS ONTARIO WORKS IN THE TOWNSHIP OF SHERBROOKE, SAVE AND EXCEPT FOREMEN, SUPERVISORS AND MANAGERS, AND PERSONS ABOVE THE RANK OF FOREMAN, SUPERVISOR AND MANAGER, SECRETARIES TO THE PLANT MANAGER, PRODUCTION MANAGER, OFFICE MANAGER AND PERSONNEL MANAGER, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A COOPERATIVE TRAINING BASIS WITH A UNIVERSITY." (40 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSONNEL MANAGER, THE ASSISTANT PERSONNEL MANAGER, AND THE C.W.S. AND SAFETY OFFICER ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT THE EXCLUSION OF SECRETARIES AS DESCRIBED IN THE BARGAINING UNIT IS LIMITED TO ONE SECRETARY TO EACH OF THE MEMBERS OF MANAGEMENT INDICATED, NAMELY, THE PLANT MANAGER, PRODUCTION MANAGER, OFFICE MANAGER AND PERSONNEL MANAGER.

12672-66-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT) V. TEE-KAY APPAREL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (101 EMPLOYEES IN THE UNIT).

12677-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. VIRDEN LIGHTING (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS EMPLOYED IN THE DESIGN DEPARTMENT." (52 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12681-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHUTE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12683-66-R: LOCAL UNION 586 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. DOMINION ELECTRIC PROTECTION COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT).

12685-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CHUTE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

12687-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CHEMICAL EQUIPMENT FABRICATORS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 886 ).

12696-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ODORIZZI LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF PRINGLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LOG SCALERS, THE ASSISTANT LOG SCALER, OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

12708-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. VALENTINE ENTERPRISES CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

12709-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. TRAUGOTT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12710-66-R: LOCAL UNION No. 500 CANADIAN UNION OF GENERAL EMPLOYEES OF THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE HILLCREST CONVALESCENT HOSPITAL AT TORONTO, SAVE AND EXCEPT MANAGER, DIETITIAN, ASSISTANT MANAGER, SUPERVISING CHEF, STUDENT DIETITIANS, SUPERVISORS, PERSONS ABOVE THE RANK OF



SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12718-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 506 (APPLICANT) V. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12721-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL #494 (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (11 EMPLOYEES IN THE UNIT).

12723-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

12724-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ONTARIO UNDERGROUND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12727-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MARCUS SPRING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

12728-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. ROGERSON LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT LORING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LOG SCALERS, OFFICE AND SALES STAFF." (31 EMPLOYEES IN THE UNIT).

12733-66-R: UNITED ASSOCIATION - PLUMBERS LOCAL 552 (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (3 EMPLOYEES IN THE UNIT).

12734-66-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #625 (FORMERLY-INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 625) (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL #27 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 888 ).

12737-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. WINTER & SON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS PLASTERING OPERATIONS IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT PLASTERERS, PLASTERERS' APPRENTICES AND LABOURERS TENDING PLASTERERS ARE INCLUDED IN THE PHRASE "EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS PLASTERING OPERATIONS".

(SEE INDEXED ENDORSEMENT PAGE 889 ).

12739-66-R: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) v. WHEEL TRUEING TOOL COMPANY OF CANADA, LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (49 EMPLOYEES IN THE UNIT).

12740-66-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS (APPLICANT) V. TOWNSHIP OF BLEZARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

12768-66-R: LOCAL UNION 498, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. STRADWICKS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF RESILIENT FLOORING IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

12507-66-R: LOCAL UNION No. 500 CANADIAN UNION OF GENERAL EMPLOYEES OF THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL #929 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE SALVATION ARMY GRACE HOSPITAL, TORONTO, SAVE AND EXCEPT MANAGER, DIETITIAN, ASSISTANT MANAGER, SUPERVISING CHEF, STUDENT DIETITIANS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	13
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	3

12575-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. SPAULDING FIBRE OF CANADA, LTD. (RESPONDENT) V. THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	30
NUMBER OF PERSONS WHO CAST BALLOTS	30
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	28

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF INTERVENER

2

12662-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. LENNOX INDUSTRIES (CANADA) LTD. (RESPONDENT) v. THE LENNOX EMPLOYEES' UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS AND OFFICE STAFF." (78 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

76

NUMBER OF PERSONS WHO CAST BALLOTS

76

NUMBER OF BALLOTS MARKED IN FAVOUR

OF APPLICANT

53

NUMBER OF BALLOTS MARKED IN FAVOUR

OF INTERVENER

23

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12350-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. ATOM-OTIVE PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (106 EMPLOYEES THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

87

NUMBER OF PERSONS WHO CAST BALLOTS

79

NUMBER OF SPOILED BALLOTS

3

NUMBER OF BALLOTS MARKED IN FAVOUR

OF APPLICANT

61

NUMBER OF BALLOTS MARKED AGAINST

APPLICANT

15

12491-66-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. WEBPAX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS A WEEK." (37 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

33

NUMBER OF PERSONS WHO CAST BALLOTS

33

BALLOTS SEGREGATED AND NOT COUNTED

1



NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

NO VOTE CONDUCTED

12359-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL 1669 (APPLICANT) V. L. FORTIN CONSTRUCTION (RESPONDENT).  
(7 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 874 ).

12444-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204  
(APPLICANT) V. TORONTO EAST GENERAL AND ORTHOPAEDIC HOSPITAL (RESPONDENT)  
V. GROUP OF EMPLOYEES (OBJECTORS). (704 EMPLOYEES).

12467-66-R: DIVISION 1524, AMALGAMATED TRANSIT UNION, TORONTO, ONTARIO  
(APPLICANT) V. TORONTO TRANSIT COMMISSION (RESPONDENT) V. GROUP OF EMPLOYEES  
(OBJECTORS). (127 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 878 ).

12503-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC  
(APPLICANT) V. SUNSHINE UNIFORM SUPPLY CO. LTD. (RESPONDENT) V. GROUP OF  
EMPLOYEES (OBJECTORS). (10 EMPLOYEES).

12610-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT  
V. JOHN N. BROCKLESBY TRANSPORT LIMITED (RESPONDENT) V. WAREHOUSEMEN AND  
MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA  
(INTERVENER). (14 EMPLOYEES).

12616-66-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506  
(APPLICANT) V. KENWAY CONSTRUCTION LIMITED (RESPONDENT). (3 EMPLOYEES).

12666-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V.  
CANADIAN INDUSTRIES LIMITED (RESPONDENT). (12 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 882 ).

12668-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. CANADIAN  
FILTERS (HARWICH) LIMITED (RESPONDENT). (45 EMPLOYEES).

12674-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND  
ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. G & H STEEL SERVICE  
OF CANADA LTD., 7 PHARMACY AVENUE, TORONTO, ONTARIO (RESPONDENT).  
(5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 883 ).

12694-66-R: LOCAL UNION 498, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. STRADWICKS LTD. (RESPONDENT). (2 EMPLOYEES).

12732-66-R: INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS & PAPER-HANGERS OF AMERICA, LOCAL #1494 (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 888 ).

12735-66-R: THE VAUGHAN TOWNSHIP EMPLOYEES ASSOCIATION (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF VAUGHAN (RESPONDENT). (45 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12517-66-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH C.L.C.A.F. OF L. C.I.O. (APPLICANT) V. THE BREITHAUP LEATHER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HASTINGS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (51 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	53
NUMBER OF PERSONS WHO CAST BALLOTS	53
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	31

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

12401-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 (APPLICANT) V. FRANCON 1966 LIMITED (RESPONDENT) V. TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (INTERVENER) V. A COUNCIL OF TRADE UNIONS ACTING AS THE REPRESENTATIVE AND AGENT OF THE INTERNATIONAL ENGINEERS, LOCAL 793 INTERNATIONAL HOD CARRIERS' & COMMON LABOURERS' UNION OF AMERICA, LOCAL 1250 (INTERVENER). (72 EMPLOYEES).

12632-66-R: TEAMSTERS INTERNATIONAL UNION LOCAL 990, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. FORT FRANCES EQUIPMENT LIMITED (RESPONDENT). (60 EMPLOYEES).

12633-66-R: TEAMSTERS INTERNATIONAL UNION LOCAL 990, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS (APPLICANT) V. BORDER CITIES READY-MIX CEMENT LIMITED (RESPONDENT). (60 EMPLOYEES).

12659-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. EX-CELL-O CORPORATION OF CANADA, LIMITED (RESPONDENT) V. INTERNATIONAL MOLDERS & ALLIED WORKERS UNION, AFL. CIO. CLC. LOCAL 49 (INTERVENER). (4 EMPLOYEES).

12691-66-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L. (APPLICANT) V. TAPLEN CONSTRUCTION LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER) V. INTERNATIONAL LABOURERS' UNION OF NORTH AMERICA (CLC) (AFL-CIO) LOCAL 527 (INTERVENER). (12 EMPLOYEES).

12711-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE AFL:CIO:CLC (APPLICANT) V. ROYAL HOTEL (RESPONDENT). (11 EMPLOYEES).

12712-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. OVERLAND HOTEL (RESPONDENT). (17 EMPLOYEES).

12713-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. IROQUOIS HOTEL (RESPONDENT). (29 EMPLOYEES).

12717-66-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131 AFL-CIO (APPLICANT) V. MARCH SHIPPING AGENCY OF ONTARIO LTD. (RESPONDENT). (13 EMPLOYEES).

12756-66-R: SAULT STE. MARIE GENERAL WORKERS UNION, LOCAL 1644 (APPLICANT) V. ALGOMA AUTO BODY (RESPONDENT). (1 EMPLOYEE).

12763-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT). (41 EMPLOYEES).

12782-66-R: MILK AND BREAD DRIVERS LOCAL UNION NO. 647, AFFILIATED WITH THE I.B.T.C. W. & H. OF AMERICA (APPLICANT) V. VERSAFOODS SERVICES LIMITED, BRANTFORD, ONTARIO (RESPONDENT). (10 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING  
FEBRUARY

12407-66-R: FREDERICK WEBB (APPLICANT) V. INTERNATIONAL CHEMICAL WORKERS UNION (RESPONDENT) V. THE WANDER COMPANY OF CANADA LIMITED (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE WANDER COMPANY OF CANADA LIMITED EMPLOYED IN ITS ANCA LABORATORIES DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF SPOILED BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF RESPONDENT

NUMBER OF BALLOTS MARKED AGAINST  
RESPONDENT

58

1

11

46

59

12530-66-R: JOE GATENSBY (APPLICANT) V. CANADIAN UNION OF OPERATING  
ENGINEERS LOCAL 101 (RESPONDENT) V. CANADIAN GENERAL ELECTRIC COMPANY  
LIMITED (INTERVENER).

- AND -

12531-66-R: ED BATES (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS  
LOCAL 101 (RESPONDENT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED  
(INTERVENER).

- AND -

12532-66-R: NICHOLAS MONITA (APPLICANT) V. CANADIAN UNION OF OPERATING  
ENGINEERS LOCAL 101 (RESPONDENT) V. CANADIAN GENERAL ELECTRIC COMPANY  
LIMITED (INTERVENER).

- AND -

12533-66-R: E. DUTCHISON (APPLICANT) V. CANADIAN UNION OF OPERATING  
ENGINEERS LOCAL 101 (RESPONDENT) V. CANADIAN GENERAL ELECTRIC COMPANY  
LIMITED (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS IN THE EMPLOY OF THE INTERVENER WORKING  
AS STATIONARY ENGINEERS IN THE BOILER ROOM AT 720 CALEDONIA ROAD, SAVE AND  
EXCEPT CHIEF ENGINEER AND/OR BUILDING ENGINEER AND PERSONS ABOVE THE RANK OF  
CHIEF ENGINEER AND/OR BUILDING ENGINEER." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF RESPONDENT

NUMBER OF BALLOTS MARKED AGAINST  
RESPONDENT

3

3

0

3

12593-66-R: MARTYN K. TIMMINGS (APPLICANT) V. INTERNATIONAL UNION OF  
ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (RESPONDENT) V.  
CANADIAN GENERAL ELECTRIC CO. LTD. (INTERVENER).

UNIT: "ALL OFFICE EMPLOYEES OF CANADIAN GENERAL ELECTRIC COMPANY LIMITED AT  
OAKVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR,  
MANAGERS, GENERAL FOREMEN, FOREMEN, PROCESS ENGINEERS, SPECIALISTS PROCESS-  
ENGINEERING, SPECIALISTS TIME-STANDARDS, SPECIALISTS PRODUCTION-CONTROL,  
SPECIALISTS PROCESS-CONTROL, SPECIALISTS CUSTOMER-PROCEDURES, NURSES, STUDENTS  
AND EMPLOYEES ON BUSINESS TRAINING COURSES, BUYERS, SENIOR COST CLERKS AND  
SECRETARY TO THE PLANT MANAGER." (21 EMPLOYEES IN THE UNIT).



NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	21
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	8
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	13

12673-66-R: RONALD JAMES ROBERTS (ON BEHALF OF A GROUP OF EMPLOYEES)  
(APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL 222 (RESPONDENT).  
(18 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 894 ).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING FEBRUARY

12689-66-U: BENNETT AND WRIGHT MECHANICAL CONTRACTORS LIMITED (APPLICANT)  
V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND  
PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 AND WILLIAM  
WEATHERUP (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

12469-66-U: ROBERT McALPINE LTD. (APPLICANT) V. INTERNATIONAL HOD CARRIERS'  
BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 AND G. GALLAGHER  
(RESPONDENTS). (WITHDRAWN).

12538-66-U: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS,  
AFL, CIO, CLC ON BEHALF OF LOCAL 541 (APPLICANT) V. ACME DIVISION POLYGON  
SERVICES LIMITED, E. C. HAMLIN, AND CHARLES PARENTEAU (RESPONDENTS).  
(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 900 ).

12539-66-U: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS,  
AFL, CIO, CLC, ON BEHALF OF LOCAL 541 (APPLICANT) V. ACME DIVISION POLYGON  
SERVICES LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 902 ).

12626-66-U: UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA (UAW) (APPLICANT) V. DRESSER ELECTRIC LIMITED (RESPONDENT).  
(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 903 ).

12627-66-U: UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA (UAW) (APPLICANT) V. DRESSER ELECTRIC LIMITED (RESPONDENT).  
(GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 906 ).

12664-66-U: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183, AF OF L, CIO, CLC (APPLICANT) V. ERNIE'S CLEANING SERVICES LIMITED (RESPONDENT). (WITHDRAWN).

12690-66-U: BENNETT AND WRIGHT MECHANICAL CONTRACTORS LIMITED (APPLICANT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 AND WILLIAM WEATHERUP (RESPONDENTS). (WITHDRAWN).

12706-66-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. BENNETT AND WRIGHT CONTRACTORS, 55 CRANFIELD ROAD, TORONTO 16, ONTARIO (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING  
FEBRUARY

12592-66-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (COMPLAINANT) V. ONTARIO TOBACCO COMPANY LIMITED (RESPONDENT).

12620-66-U: GEORGE THOMAS (COMPLAINANT) V. COLLINGWOOD SHIPYARDS (RESPONDENT).

12670-66-U: JAMES DURNIN (COMPLAINANT) V. BRICKLAYERS & MASONS INTERNATIONAL UNION LOCAL #5 & KENNETH JACKSON BUSINESS AGENT FOR ABOVE LOCAL (RESPONDENT).

12692-66-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA (COMPLAINANT) V. STAR DOLL MANUFACTURING Co. LIMITED (RESPONDENT).

12705-66-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. ROYAL HOTEL (RESPONDENT).

12720-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. CHEMICAL EQUIPMENT FABRICATORS (RESPONDENT).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING FEBRUARY

12540-66-M: UNITED DAIRY & BAKERY WORKERS' UNION, LOCAL 422 OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. MOUNTAIN VIEW DAIRY LTD.; OAKVILLE DAIRY Co-OPERATIVE LIMITED; MILK AND BREAD DRIVERS DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES. LOCAL No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 911 ).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

FEBRUARY

12520-66-M: THE UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALCAN BUILDING PRODUCTS LIMITED (FORMERLY ROSLYN METAL PRODUCTS LIMITED) (RESPONDENT).

JURISDICTIONAL DISPUTE

12436-66-JD: LONDON ACOUSTICS, LTD. (COMPLAINANT) V. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 360 (RESPONDENT) V. WESTERN ONTARIO CARPENTERS, MILLWRIGHTS AND MILLMEN DISTRICT COUNCIL AND UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, PERSON FILING A REPLY PURSUANT TO SECTION 34 OF THE BOARD'S RULES OF PROCEDURE. (DISMISSED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12438-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JOSEPH'S HOSPITAL (RESPONDENT). (DENIED).

(SEE INDEXED ENDORSEMENT PAGE 916 ).

12513-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. BOYLE-MIDWAY (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - STRIKE DECLARATION

12468-66-U: ROBERT McALPINE LTD. (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

12582-66-U: MR. IAN HOOD (COMPLAINANT) V. GENERAL BAKERIES LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 919 ).

INDEXED ENDORSEMENTS - CERTIFICATION

12242-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 18 (APPLICANT) V. SOVEREIGN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD:

FEBRUARY 8, 1967.

1. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER IN THIS MATTER, DATED JANUARY 16, 1967, AND THE REPRESENTATIONS OF THE PARTIES RELATING TO THE REPORT. THE EVIDENCE RESPECTING THE DUTIES AND RESPONSIBILITIES OF CUKELJ AND YURINICH IS STRAIGHT FORWARD AND WITHOUT CONFLICT AND THE BOARD WILL MAKE ITS DETERMINATION ON THEIR STATUS IN ACCORDANCE WITH ITS REGULAR PRACTICE IN THESE MATTERS.

2. HOWEVER, THE EVIDENCE PERTAINING TO THE STATUS OF FALCONE AND BRANDNER IS SO CONFLICTING THAT, AS BOTH THE APPLICANT AND RESPONDENT ACKNOWLEDGE IN THEIR REPRESENTATIONS, CREDIBILITY BECOMES ONE OF THE KEY ISSUES TO BE DECIDED. NOT HAVING SEEN AND HEARD THESE WITNESSES, THE BOARD IS IN NO POSITION TO RULE ON CREDIBILITY AND IS THEREFORE UNABLE TO COME TO A DECISION ON THE STATUS OF THESE TWO EMPLOYEES.

3. FOR THIS REASON ALONE, THE BOARD HAS COME TO THE RELUCTANT CONCLUSION THAT THE ONLY COURSE OPEN TO IT IS TO HOLD A HEARING WITH RESPECT TO THE STATUS OF FALCONE AND BRANDNER. THE BOARD WILL SUMMON THE TWO EMPLOYEES IN QUESTION AND WILL CONDUCT THEIR INITIAL EXAMINATION IN THE SAME WAY AS AN EXAMINER. THE PARTIES WILL HAVE FULL OPPORTUNITY TO EXAMINE THESE EMPLOYEES AND TO CALL SUCH FURTHER EVIDENCE AS THEY SEE FIT.

4. IN THE RESULT IT BECOMES UNNECESSARY TO DEAL WITH THE OTHER MATTERS RAISED IN THE REPRESENTATIONS OF THE PARTIES ON THE REPORT OF THE EXAMINER.

5. THE REGISTRAR IS DIRECTED TO LIST THIS CASE FOR HEARING.

12325-66-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA  
(APPLICANT) v. E. H. FERREE COMPANY LIMITED (RESPONDENT) v. GROUP OF  
EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. H. OSLER, Q.C., AND M. J. BRIERLY FOR THE APPLICANT, GEORGE FERGUSON, Q.C., R. J. BURMAN AND PETER HILL FOR THE RESPONDENT, AND NO ONE APPEARING FOR A GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: FEBRUARY 13, 1967.

1. BY ITS DECISION DATED NOVEMBER 27TH, 1966, THE BOARD ORDERED A REPRESENTATION VOTE TO BE TAKEN AMONG THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED THEREIN. UPON THE WRITTEN AGREEMENT OF THE PARTIES DATED NOVEMBER 23RD, 1966, WHICH SETTLED, AMONG OTHER MATTERS, THE VOTERS' LIST AND THE VOTING DATE, THE VOTE WAS DULY HELD ON DECEMBER 7TH, 1966.



2. FOLLOWING RECEIPT OF THE RETURNING OFFICER'S REPORT DATED DECEMBER 7TH, 1966, THE RESPONDENT, BY LETTER DATED DECEMBER 15TH, STATED THAT IT WISHED TO MAKE REPRESENTATIONS TO THE BOARD IN ACCORDANCE WITH THE NOTICE SET OUT IN THE AFORESAID REPORT.

3. THE LETTER REFERRED TO A CHALLENGE MADE BY THE APPLICANT UNION OF THE RIGHT TO VOTE OF ONE JACK COULSON. IT ALSO REFERRED TO THE CONTENTION OF THE RESPONDENT THAT THERESE CAPALBO SHOULD NOT HAVE BEEN INCLUDED IN THE ELIGIBLE VOTERS' LIST. THE BOARD WAS ADVISED BY COUNSEL FOR BOTH PARTIES AT THE HEARING THAT THE PARTIES AGREE THAT JACK COULSON IS ELIGIBLE TO VOTE AND HIS BALLOT SHOULD BE COUNTED. THE BOARD WAS FURTHER ADVISED THAT THE PARTIES AGREED THAT THERESA CAPALBO WAS DISCHARGED FOR CAUSE ON NOVEMBER 23RD AND WAS INELIGIBLE TO VOTE, AND THAT HER BALLOT SHOULD NOT BE COUNTED.

4. THE ONLY QUESTION LEFT FOR THE BOARD TO DEAL WITH THEN, CONCERNS THE ELIGIBILITY TO VOTE OF SOME TWENTY-SIX EMPLOYEES OF THE RESPONDENT.

5. ON NOVEMBER 28TH, 1966, THIRTY EMPLOYEES OF THE RESPONDENT, WHOSE NAMES WERE ON THE VOTERS' LIST, WERE LAID OFF. THE LAY-OFF WAS CARRIED OUT IN ORDER OF THE SENIORITY OF THE EMPLOYEES CONCERNED. AT THE TIME OF HIS LAY-OFF EACH EMPLOYEE RECEIVED A LETTER ON THE RESPONDENT'S LETTERHEAD. THE LETTER IS DATED NOVEMBER 28TH, 1966, AND READS AS FOLLOWS:

AS YOU KNOW, SINCE THE NEW MANAGEMENT TOOK OVER THIS COMPANY THREE YEARS AGO, WE HAVE TRIED TO AVOID THE LAYOFF OF EMPLOYEES.

UNFORTUNATELY, AS OF TODAY, OUR BACKLOG OF ORDERS IS THE LOWEST IT HAS BEEN IN THREE YEARS AS OF THIS DATE. OUR ORDERS ON HAND AT PRESENT ARE JUST HALF OF WHAT THEY WERE A YEAR AGO. OUR FINISHED INVENTORY IS ALSO MUCH HIGHER THAN IT WAS A YEAR AGO.

FOR THE ABOVE REASONS, WE MUST ADVISE YOU THAT AS OF TODAY, NOVEMBER 28, 1966 AT 4:30 P.M. YOU ARE ON AN INDEFINITE LAYOFF. IF YOU WISH TO RETURN TO OUR EMPLOYMENT WE WOULD SUGGEST THAT YOU MAKE APPLICATION IN FEBRUARY, 1967 AT WHICH TIME WE WILL CONSIDER SAME.

WE WISH TO EXPRESS OUR SINCERE REGRET AT HAVING TO TAKE THIS STEP AT THIS TIME, BUT CONDITIONS HAVE FORCED US TO DO SO.

6. THE BOARD FINDS, ON THE BASIS OF ALL THE EVIDENCE ADDUCED AND WHAT WAS ALLEGED BY COUNSEL, THAT THE THIRTY EMPLOYEES LAID OFF ON NOVEMBER 23RD, 1966, WERE ON INDEFINITE LAY-OFF AT THE TIME THE VOTE WAS TAKEN. THE BOARD FURTHER FINDS, ON THE SAME BASIS, THAT THE LAY-OFF WAS DUE SOLELY TO BUSINESS CONDITIONS AT THE TIME IT WAS PUT INTO EFFECT. THIS LATTER FINDING IS SUBSTANTIATED BY THE FACT THAT FURTHER SUBSTANTIAL LAY-OFFS OCCURRED AFTER THE TAKING OF THE VOTE.

7. ON DECEMBER 7TH, TWENTY-SIX OF THE LAID OFF EMPLOYEES, AS LISTED ON APPENDIX "A" OF THE POST HEARING VOTE REPORT, VOTED AND THEIR BALLOTS WERE SEGREGATED. IT IS THE CONTENTION OF THE RESPONDENT THAT THE TWENTY-SIX EMPLOYEES WERE ON AN INDEFINITE LAY-OFF AND SO WERE INELIGIBLE TO VOTE.

8. THE BOARD IN ITS DECISION OF NOVEMBER 17TH, MADE THE USUAL DIRECTION FOR THE TAKING OF A REPRESENTATION VOTE. THE DIRECTION IS AS FOLLOWS:-

A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

WITH RESPECT TO THIS DIRECTION, THE BOARD, IN THE RIX-ATHABASCA URANIUM MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY 1961, P. 127, WHICH DEALT WITH THE QUESTION OF ELIGIBILITY TO VOTE OF AN EMPLOYEE ON INDEFINITE LAY-OFF, HAD THIS TO SAY:-

HAVING REGARD TO THESE CIRCUMSTANCES AND THE LONG-STANDING AND WELL-KNOWN POLICY OF THE BOARD IN CASES OF THIS NATURE, THE BOARD FINDS THAT AT THE TIME OF THE VOTE FINNERTY WAS NOT AN ELIGIBLE VOTER. WHILE, AS ARGUED BY THE APPLICANT, THE WORDS "DISCHARGED FOR CAUSE" CONVEY THE MEANING AT COMMON LAW THAT THE PERSON IS DISCHARGED BECAUSE OF SOME MISCONDUCT ON HIS PART, THE CONSISTENT PRACTICE OF THE BOARD SINCE IT HAS ADOPTED THESE WORDS IN ITS ENDORSEMENT CLEARLY MANIFEST THAT THE BOARD INTENDED A MORE EXTENDED MEANING THAN IS ASCRIBED TO THEM BY THE PARLANCE OF THE COMMON LAW. FOR OBVIOUS REASONS THE BOARD IN ITS ENDORSEMENT HAS CAREFULLY AVOIDED A RIGID AND ALL-EMBRACING DESCRIPTION OF THE CRITERIA OF ELIGIBILITY.

(SEE ALSO THE CANADIAN WESTINGHOUSE COMPANY LIMITED CASE, BOARD FILE NO. 10369-65-R). THE ATTENTION OF THE BOARD WAS DRAWN TO THE COBALT REFINERY LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1964, P. 292. THE BOARD FINDS, HOWEVER, THAT THE PARTICULAR FACTS OF THAT CASE MAKE IT INAPPLICABLE TO THE CIRCUMSTANCES HERE UNDER CONSIDERATION.

9. IN VIEW OF THE ABOVE FINDINGS AND IN THE LIGHT OF ALL THE EVIDENCE HEREIN, AND IN CONFORMITY WITH THE CONSISTENT PRACTICE OF THE BOARD, REFERRED TO IN THE FOREGOING CASES, WITH RESPECT TO THE APPLICATION AND INTERPRETATION OF THE STANDARD DIRECTION FOR THE TAKING OF A VOTE, THE BOARD FINDS THAT THE THIRTY PERSONS LAID OFF ON NOVEMBER 23RD, 1966, WERE NOT ELIGIBLE TO VOTE IN THE REPRESENTATION VOTE TAKEN HEREIN. THE BOARD DIRECTS THAT THE NAMES OF THE SAID THIRTY EMPLOYEES BE STRUCK OFF THE REVISED VOTERS' LIST. THE BOARD

FURTHER DIRECTS THAT THE NAME OF THERESA CAPALBO BE REMOVED FROM THE REVISED VOTERS' LIST.

10. THE REGISTRAR IS DIRECTED TO PROCEED WITH THE COUNTING OF THE BALLOTS CAST AT THE REPRESENTATION VOTE HELD IN THIS MATTER, INCLUDING THAT OF JACK COULSON, WHICH WAS SEGREGATED, BUT EXCLUDING THE SEGREGATED BALLOT OF THERESA CAPALBO AND THE SEGREGATED BALLOTS CAST BY THOSE TWENTY-SIX EMPLOYEES LAID OFF ON NOVEMBER 23RD, 1966 AND LISTED IN APPENDIX "A" OF THE POST HEARING VOTE REPORT HEREIN.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 13, 1967.

I DISSENT. THE BOARD, IN ITS DECISION OF NOVEMBER 17TH, DIRECTED THAT A REPRESENTATION VOTE BE HELD IN THE INSTANT CASE. THE BOARD'S ENDORSEMENT WAS AS FOLLOWS:

A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

FOLLOWING THE BOARD'S INSTRUCTIONS, THE PARTIES MET, ON NOVEMBER 23RD, WITH THE BOARD'S EXAMINER FOR THE PURPOSE OF SETTLING THE ELIGIBLE VOTERS' LIST IN ACCORDANCE WITH THE BOARD'S ENDORSEMENT.

FIVE DAYS LATER, AFTER THE PARTIES HAD AGREED ON THE ELIGIBLE VOTERS' LIST, THE RESPONDENT PUT THIRTY EMPLOYEES ON AN INDEFINITE LAY-OFF.

ON THE DATE OF VOTING, DECEMBER 7TH, TWENTY-SIX OF THE THIRTY EMPLOYEES WHO WERE ON INDEFINITE LAY-OFF SHOWED UP TO VOTE AND DID VOTE. THESE VOTES WERE SEGREGATED PENDING THE DECISION OF THIS BOARD ON THE ELIGIBILITY OF THE EMPLOYEES TO HAVE THEIR VOTE COUNTED.

THE RESPONDENT CLAIMS THAT THIS GROUP OF EMPLOYEES SHOULD BE DISENFRANCHISED BECAUSE OF HIS ACT IN PUTTING THEM ON AN INDEFINITE LAY-OFF.

I COULD NOT AGREE WITH THE MAJORITY DECISION IN THIS CASE. THE MAJORITY, BY DENYING THIS GROUP OF TWENTY-SIX EMPLOYEES THE RIGHT TO VOTE IN THIS CERTIFICATION PROCEEDING, ARE IN MY RESPECTFUL OPINION ACTING CONTRARY TO THEIR PRIOR DECISION IN THIS MATTER ON NOVEMBER 17TH.

THE BOARD'S DECISION ON THAT DATE IS IN CLEAR AND UNAMBIGUOUS LANGUAGE, THE BOARD DIRECTED ...ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF (NOVEMBER 17TH) WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE

DATE HEREOF AND THE DATE THE VOTE IS TAKEN (DECEMBER 7TH) WILL BE ELIGIBLE TO VOTE.

THERE ARE TWO CONDITIONS SET OUT IN THE FOREGOING DECISION THAT WILL MAKE A PERSON INELIGIBLE TO VOTE. THE FIRST IS THAT THE PEOPLE INVOLVED MUST VOLUNTARILY TERMINATE THEIR EMPLOYMENT, NONE OF THE TWENTY-SIX PEOPLE INVOLVED FELL INTO THAT CATEGORY. THE SECOND CONDITION IS THAT THEY WILL BE INELIGIBLE TO VOTE IF THEY ARE DISCHARGED FOR CAUSE.

THE WORDS "DISCHARGED FOR CAUSE" HAVE A CLEAR MEANING IN COMMON LAW TO THE EFFECT THAT THE DISCHARGE IS FOR MISCONDUCT ON AN EMPLOYEE'S PART. IN NUMEROUS ARBITRATION CASES "DISCHARGED FOR CAUSE" CARRIES THE SAME MEANING AS IN COMMON LAW. THE TWENTY-SIX EMPLOYEES IN THIS CASE WERE NOT DISCHARGED FOR CAUSE WITHIN THE GENERALLY ACCEPTED MEANING OF THESE WORDS.

THE EMPLOYEES INVOLVED, IN ATTENDING AT THE PLACE OF VOTING ON DECEMBER 7TH, AND REQUESTING THAT THEY HAVE THE RIGHT TO VOTE, WERE ACTING ON THE BOARD'S CLEAR INSTRUCTION OF NOVEMBER 17TH. THESE EMPLOYEES HAD NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT, THEY HAD NOT BEEN DISCHARGED FOR CAUSE, THEY WERE STILL EMPLOYEES OF THE RESPONDENT, THEY HAD A VITAL INTEREST IN THE OUTCOME OF THIS VOTE AND THEY HAD EVERY RIGHT TO EXPECT THAT THEY WERE ELIGIBLE TO VOTE.

I DO NOT ARGUE THAT THEY WERE ON AN INDEFINITE LAY-OFF, THIS IS AN ESTABLISHED FACT. I DO ARGUE THAT BEING PUT ON AN INDEFINITE LAY-OFF IS A SUFFICIENT REASON TO DENY THEM A VOTE IN THIS MATTER.

THE CONCISE OXFORD DICTIONARY DEFINES INDEFINITE AS "DENOTING AN ACTION WITHOUT SPECIFYING WHETHER IT IS CONTINUOUS OR COMPLETE".

I SUBMIT THAT EMPLOYEES ON AN INDEFINITE LAY-OFF ARE STILL EMPLOYEES OF THE EMPLOYER AND AS SUCH HAVE EMPLOYEES RIGHTS AS PROVIDED FOR IN THE ONTARIO LABOUR RELATIONS ACT. THESE RIGHTS INCLUDE THE RIGHT TO JOIN A UNION AND ENGAGE IN ITS LAWFUL ACTIVITIES, THE RIGHT TO PARTICIPATE IN A BOARD CONDUCTED VOTE IN ACCORDANCE WITH SECTION 7(2) AND (3) OF THE ACT.

THE MAJORITY DECISION IN LIGHT OF THE PARTICULAR CIRCUMSTANCES OF THIS CASE IS AN EXTREMELY DANGEROUS DECISION, IN THAT IT GIVES TO MANAGEMENT IN REPRESENTATION VOTE SITUATIONS THE UNDISPUTED RIGHT TO DISENFRANCHISE ANY OR ALL OF ITS EMPLOYEES AT ANYTIME BY THE SIMPLE EXPEDIENT OF PUTTING THEM ON "INDEFINITE LAY-OFF".

IN THE INSTANT CASE THE PARTIES MET ON NOVEMBER 23RD TO DETERMINE THE ELIGIBLE VOTERS' LIST AND THE DATE AND TIME OF THE VOTE. FIVE DAYS AFTER THIS MEETING AND NINE DAYS BEFORE THE DATE OF VOTING THIRTY EMPLOYEES WERE PUT ON AN "INDEFINITE LAY-OFF". THE MAJORITY DECISION DENIES THIS GROUP OF EMPLOYEES THE RIGHT TO VOTE. AS I SAID PREVIOUSLY, THIS LARGE GROUP OF PEOPLE ARE STILL EMPLOYEES OF THE RESPONDENT, AND AS SUCH HAVE A VITAL AND CONTINUING INTEREST IN THIS VOTE AND WHAT FOLLOWS THEREAFTER, AND AS SUCH SHOULD BE CLEARLY ENTITLED TO CAST THEIR VOTE TO PROTECT THEIR INTERESTS IN THEIR EMPLOYMENT.



I WOULD HAVE ALLOWED THE TWENTY-SIX DISPUTED VOTES TO BE COUNTED, ANYTHING LESS THAN THIS WOULD, IN MY RESPECTFUL OPINION, BE A DENIAL OF RIGHTS ALREADY GIVEN TO THESE EMPLOYEES BY THE VARIOUS PROVISIONS OF THE ONTARIO LABOUR RELATIONS ACT.

12353-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CANADIAN ACME SCREW & GEAR LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND H. F. IRWIN.

DECISION OF THE BOARD: FEBRUARY 16, 1967.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JANUARY 19TH, 1967, IN THIS MATTER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, ASSISTANT SUPERVISORS, CHIEF INSPECTORS, TECHNICIANS, TECHNICIAN TRAINEES, METALLURGISTS, SALESMEN, SALES REPRESENTATIVES, PURCHASING CO-ORDINATOR, ADMINISTRATIVE ASSISTANT TO DEPARTMENT HEADS, ADMINISTRATIVE ASSISTANT TO PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, SECRETARIES TO DEPARTMENT HEAD, SECRETARY TO PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, COST ANALYST, PAYMASTER, SALARIED PAYROLL SECTION, PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, NURSES, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT W. ACKI, L. ADLER AND A. KIRKMAN ARE THE PERSONS EXCLUDED UNDER THE CLASSIFICATION OF ASSISTANT SUPERVISORS, THAT W. SINCLAIR IS THE PERSON EXCLUDED UNDER THE CLASSIFICATION OF METALLURGIST, THAT H. KEARNEY IS THE PERSON EXCLUDED UNDER THE CLASSIFICATION OF ADMINISTRATIVE ASSISTANT TO DEPARTMENT HEADS, THAT R. J. NICOL IS THE PERSON EXCLUDED UNDER THE CLASSIFICATION OF ADMINISTRATIVE ASSISTANT TO PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, THAT C. HILL IS THE PERSON EXCLUDED UNDER THE CLASSIFICATION OF SECRETARY TO DEPARTMENT HEAD, THAT G. RYCKMAN IS THE PERSON EXCLUDED UNDER THE CLASSIFICATION OF SECRETARY TO PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, AND THAT E. MOOR AND B. RELF ARE PERSONS EXCLUDED UNDER THE CLASSIFICATION OF SALARIED PAYROLL SECTION.

5. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT METHODS TECHNICIANS AND THE ASSISTANT PAYMASTER ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. WHILE THE RESPONDENT HAS REQUESTED THE EXCLUSION OF PERSONS CLASSIFIED AS CHEMISTS, THE RESPONDENT AT THE PRESENT TIME DOES NOT EMPLOY ANY PERSON IN THIS CLASSIFICATION. PURSUANT TO THE BOARD'S USUAL PRACTICE IN SIMILAR CASES, SINCE THERE ARE NO EMPLOYEES IN THE PROPOSED EXCLUDED CLASSIFICATION TO BE EXAMINED, THE BOARD CANNOT MAKE ANY DETERMINATION WITH RESPECT TO THE PROPOSED EXCLUSION OF THE CLASSIFICATION OF CHEMISTS.

7. THE RESPONDENT HAS ALSO REQUESTED THE EXCLUSION OF PERSONS CLASSIFIED AS TIME STUDY TECHNICIANS. IT HAS BEEN THE BOARD'S EXPERIENCE THAT TIME STUDY TECHNICIANS ARE AT TIMES INCLUDED IN A BARGAINING UNIT AND ARE AT OTHER TIMES EXCLUDED FROM A BARGAINING UNIT DEPENDING UPON THE PARTICULAR CIRCUMSTANCES IN EACH CASE. WHERE THE BOARD INCLUDES TIME STUDY TECHNICIANS IN BARGAINING UNITS IT USUALLY DOES SO ON THE BASIS THAT WHILE THE TIME STUDY TECHNICIANS HAD REPORTING FUNCTIONS THEY HAD NO MANAGEMENT FUNCTIONS AND WERE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY TO ANY MEANINGFUL DEGREE.

8. IN THE INSTANT CASE, HOWEVER, THE BOARD FINDS THAT IN ADDITION TO CERTAIN REPORTING FUNCTIONS WHICH ARE EXERCISED BY THE TIME STUDY TECHNICIANS, THEY HAVE OTHER REGULAR FUNCTIONS REQUIRING THE EXERCISE OF INDEPENDENT JUDGMENT. THE TIME STUDY TECHNICIANS, IN THIS CASE, MAKE RECOMMENDATIONS AFFECTING THE ASSIGNING OF EMPLOYEES AND AT TIMES AFFECTING THE REDUCTION OF THE NUMBER OF PERSONS EMPLOYED BY THE RESPONDENT. THE TIME STUDY TECHNICIANS ARE INVOLVED IN DISCUSSIONS WITH MANAGEMENT WITH RESPECT TO THE DISPOSITION OF GRIEVANCES, WHICH DISCUSSIONS ARE CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS. THEY RECOMMEND THAT NEW EMPLOYEES BE RETAINED AND ARE ALSO ASKED TO PICK EMPLOYEES FOR THE PURPOSES OF PROMOTION. IN ADDITION, THEY REPRESENT MANAGEMENT IN DEALING WITH UNION REPRESENTATIVES AND THE UNION'S TIME STUDY TECHNICIANS. THEY ALSO REPRESENT MANAGEMENT IN RESOLVING DIFFERENCES BETWEEN THE UNION'S TIME STUDY AND THE COMPANY'S TIME STUDY, AND THEY ACT ON BEHALF OF MANAGEMENT IN ASSESSING THE UNION'S PROPOSALS FOR CHANGES IN THE COLLECTIVE AGREEMENT WHICH WOULD AFFECT STANDARDS AND THE METHODS OF SETTING STANDARDS IN THE FUTURE. ON THE BASIS OF THE UNCONTESTED EVIDENCE OF THE MANNER IN WHICH THE TIME STUDY TECHNICIANS IN THIS CASE ACT ON BEHALF OF MANAGEMENT, THE BOARD FINDS THAT THE TIME STUDY TECHNICIANS ARE REQUIRED TO PERFORM MORE THAN A SIMPLE REPORTING FUNCTION AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THEREFORE ARE NOT EMPLOYEES OF THE RESPONDENT ELIGIBLE FOR INCLUSION IN ANY BARGAINING UNIT.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12359-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (APPLICANT) V. L. FORTIN CONSTRUCTION (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 28, 1967.

1. THE APPLICANT IN THIS CASE HAS APPLIED FOR ITS USUAL CARPENTERS' UNIT. IT SUBMITS THAT ON THE DAY OF THE MAKING OF THE APPLICATION THERE WERE 5 EMPLOYEES OF THE RESPONDENT WHO WOULD BE INCLUDED IN SUCH A UNIT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 3 OF THESE 5 PERSONS.

2. THE RESPONDENT CONTENDS THAT THE APPROPRIATE BARGAINING UNIT WOULD INCLUDE 8 EMPLOYEES, THE 5 EMPLOYEES REFERRED TO ABOVE, 4 OF WHOM ARE CLASSIFIED AS CARPENTERS AND ONE AS A LEAD HAND CARPENTER, AND 3 OTHERS, RICARD, DESBIENS AND FORTIN. THE APPLICANT SUBMITS THAT THESE LAST 3 PERSONS ARE HIGH QUALITY LABOURERS WHO ASSISTED THE CARPENTERS AS HELPERS ON OCCASION.

3. THE EVIDENCE IN THIS CASE IS CERTAINLY NOT AS PRECISE AS IT MIGHT BE. THE EVIDENCE OF THE RESPONDENT AND OF EACH OF THE EMPLOYEES WHO TESTIFIED CLEARLY ESTABLISHES THAT THE 5 PERSONS WHO ARE AGREED TO BE CARPENTERS DO A SUBSTANTIAL AMOUNT OF LABOURING WORK IN ADDITION TO CARPENTRY WORK. ONE OF THE CARPENTERS TESTIFIED THAT THEY WORKED ONLY ABOUT 50% OF THEIR TIME AS CARPENTERS. THE RESPONDENT'S EVIDENCE IS THAT LABOURERS WERE LAID OFF IN ORDER TO PROVIDE WORK FOR THE CARPENTERS.

4. LET US TURN NOW TO THE EVIDENCE RESPECTING THE EMPLOYEES IN DISPUTE. DEALING FIRSTLY WITH RICARD AND DESBIENS, THEIR EVIDENCE AND THAT OF THE WITNESSES CALLED BY THE RESPONDENT IS THAT BOTH WERE HIRED AS CARPENTERS, THAT THEY HAD CARPENTERS' TOOLS, THAT THEY WERE CARPENTERS AND DID CARPENTRY WORK FOR THE RESPONDENT. LIKE THE 5 CARPENTERS THEY ALSO DID A SUBSTANTIAL AMOUNT OF LABOURING WORK. THE EVIDENCE OF POISSON, WHO WAS CALLED AS A WITNESS BY THE APPLICANT UNION, TENDS TO CONFIRM THIS GENERAL PICTURE. WHILE HE KNEW VERY LITTLE ABOUT DESBIENS, HAVING WORKED WITH HIM FOR ONLY A FEW HOURS, DURING THAT TIME DESBIENS WAS DOING CARPENTRY WORK. WITH RESPECT TO RICARD, WITH WHOM HE WORKED FOR A MONTH, POISSON'S EVIDENCE IS THAT RICARD WAS A CARPENTER DOING CARPENTER'S WORK.

5. ADMITTEDLY IT IS DIFFICULT, IN VIEWING ALL OF THIS EVIDENCE, TO MAKE ANY ACCURATE ESTIMATE AS TO HOW MUCH TIME RICARD AND DESBIENS SPENT ON CARPENTRY WORK AND HOW MUCH ON LABOURER'S WORK, BUT THERE IS NOTHING IN THE EVIDENCE TO SUGGEST THAT IN THE OVERALL PICTURE THEY SPENT ANY LESS TIME IN CARPENTRY WORK THAN THE 5 CARPENTERS.

6. THE APPLICANT IN ITS SUBMISSIONS TO THE BOARD IGNORES THIS EVIDENCE AND RELIES ALMOST SOLELY ON THE EVIDENCE OF LABERGE, THE LEAD HAND, AND OF BOUCHARD, ONE OF THE 4 CARPENTERS. WHILE THEIR EVIDENCE, AS FAR AS IT GOES, TENDS TO SUPPORT THE POSITION OF THE APPLICANT, ITS USEFULNESS IS IMPAIRED BY THE FACT THAT LABERGE DID NOT WORK AT THE RIVER HEIGHTS JOB AND BOUCHARD WAS THERE FOR ONLY TWO AND ONE-HALF DAYS. YET OTHER EVIDENCE BEFORE US ESTABLISHES THAT BOTH RICARD AND DESBIENS SPENT SOME TIME AT THIS PARTICULAR JOB WHERE THEY DID A CONSIDERABLE AMOUNT OF CARPENTRY WORK. FURTHER, LABERGE ADMITTED THAT WHEN RICARD WORKED AS A CARPENTER HIS CARPENTRY WORK WAS AS GOOD AS THE OTHER CARPENTERS AND BOUCHARD AGREED WITH THIS STATEMENT. FURTHER, BOUCHARD TESTIFIED HE FOUND IT DIFFICULT TO CLASSIFY EITHER RICARD OR DESBIENS.

7. AFTER CAREFULLY CONSIDERING ALL THE EVIDENCE BEFORE US, THE REASONABLE CONCLUSION TO BE DRAWN, IN OUR JUDGMENT, IS THAT RICARD AND DESBIENS, WHILE NOT FIRST CLASS CARPENTERS, PERFORM SUBSTANTIALLY THE SAME DUTIES AS THE 5 CARPENTERS AND SHOULD BE INCLUDED IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE IN THIS CASE. IN OTHER WORDS, IF A CARPENTERS' UNIT IS THE APPROPRIATE UNIT, THEN RICARD AND DESBIENS WOULD BE INCLUDED IN SUCH UNIT; IF THE APPROPRIATE UNIT IS AN ALL EMPLOYEE UNIT, THEN OF COURSE IT IS CLEAR THEY WOULD BE INCLUDED IN THAT UNIT.

8. AS WAS POINTED OUT ABOVE, THE APPLICANT UNION FILED EVIDENCE OF MEMBERSHIP FOR 3 EMPLOYEES. ON THE BASIS OF OUR FINDINGS THERE WOULD BE AT LEAST 7 EMPLOYEES IN ANY UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE. THE APPLICANT, THEREFORE, HAS LESS THAN 45% OF THE EMPLOYEES AS MEMBERS IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE.

9. IN THESE CIRCUMSTANCES, THERE IS NO NEED TO DEAL WITH THE STATUS OF FORTIN.

10. THE APPLICATION IS DISMISSED.

12396-66-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. DOMINION GLASS COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, FOR THE MAJORITY AND DISSENTING DECISIONS OF BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON:  
FEBRUARY 23, 1967.



1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JANUARY 25TH, 1967, IN THIS MATTER.

2. THE BOARD FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, ASSISTANT OFFICE MANAGER, ASSISTANT TO PRODUCT MANAGER, PROFESSIONAL ENGINEERS, THE CONFIDENTIAL SECRETARY SHARED BY THE FACTORY MANAGER AND THE OFFICE MANAGER, REGISTERED NURSES, SALESMEN, SECURITY GUARDS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES IN WRITING WITH RESPECT THERETO, THE BOARD DECLARES THAT S. THORNTON, P. LOZON, E. DAVIS AND GERALD HENDERSON DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND WERE ELIGIBLE TO VOTE IN THE REPRESENTATION VOTE DIRECTED IN THIS MATTER.

4. THE BOARD FURTHER DECLARES THAT E. MARKHAM, S. GRANGER AND L. BURM EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND WERE NOT ELIGIBLE TO VOTE IN THE REPRESENTATION VOTE DIRECTED IN THIS MATTER.

5. THE BOARD DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE TO BE COUNTED AND REPORT TO THE BOARD.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 23, 1967.

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO S. GRANGER WHOM I WOULD FIND TO BE AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: FEBRUARY 23, 1967.

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO THE INCLUSION OF PATRICIA LOZON AND GERALD HENDERSON IN THE BARGAINING UNIT. I WOULD FIND THAT PATRICIA LOZON IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND THAT GERALD HENDERSON EXERCISES MANAGERIAL FUNCTIONS. THEREFORE, PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT, NEITHER WOULD BE DEEMED TO BE EMPLOYEES AND ACCORDINGLY NEITHER SHOULD BE INCLUDED IN THE BARGAINING UNIT.

12422-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. LIVINGSTON WOOD MANUFACTURING LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J. E. C. ROBINSON.

DECISION OF THE BOARD: FEBRUARY 6, 1967.

1. THE PARTIES HAVE REQUESTED THE DIRECTION OF THE BOARD WITH RESPECT TO THE SCOPE OF EXAMINATION AND CROSS-EXAMINATION OF WITNESSES BEFORE THE EXAMINER APPOINTED IN THIS MATTER. THE QUESTIONS IN ISSUE ARE, IN GENERAL, QUESTIONS OF THE DUTIES AND RESPONSIBILITIES OF CERTAIN EMPLOYEES OF THE RESPONDENT. IT IS THE POSITION OF THE RESPONDENT AND THE INTERVENER THAT THE QUESTIONS PUT TO WITNESSES CALLED ON THESE ISSUES SHOULD BE RESTRICTED TO QUESTIONS RELATING ONLY TO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS CONCERNED ON THE DATE OF THE MAKING OF THIS APPLICATION. IT WAS THE POSITION OF THE APPLICANT THAT SUCH QUESTIONS SHOULD NOT BE SO RESTRICTED.
2. THERE IS NO DOUBT THAT THE DETERMINATION ULTIMATELY TO BE MADE BY THE BOARD MUST RELATE TO THE DUTIES AND RESPONSIBILITIES OF PERSONS ALLEGED TO BE IN THE BARGAINING UNIT AS OF THE DATE OF THE MAKING OF THE APPLICATION. IT DOES NOT FOLLOW, HOWEVER, THAT QUESTIONS WHICH MIGHT BE RELEVANT TO THAT DETERMINATION MUST BE QUESTIONS RELATING ONLY TO THE DATE OF THE APPLICATION ITSELF. CLEARLY, NOT ALL OF THE DUTIES AND RESPONSIBILITIES OR WORKING CONDITIONS APPERTAINING TO A PARTICULAR CLASSIFICATION NEED BE EXERCISED ON ANY PARTICULAR DAY. EVIDENCE WHICH WOULD BE RELEVANT TO THE DETERMINATION TO BE MADE BY THE BOARD MIGHT WELL INCLUDE EVIDENCE RELATING TO THE PERFORMANCE OF AN EMPLOYEE'S DUTIES OR THE EXERCISE OF HIS RESPONSIBILITIES OR THE NATURE OF HIS WORKING CONDITIONS ON SOME OTHER DATE PROVIDED, OF COURSE, THAT SUCH EVIDENCE DOES RELATE TO THE CLASSIFICATION HELD BY THE EMPLOYEE ON THE DATE OF THE MAKING OF THE APPLICATION. IT MUST BE BORNE IN MIND THAT THE PURPOSE OF THE EXAMINER'S INQUIRY IS THE MAKING OF A REPORT CONTAINING SUFFICIENT RELEVANT EVIDENCE TO ENABLE THE BOARD TO MAKE A PROPER DETERMINATION ON THE MERITS OF THE MATTER IN ISSUE.
3. THE APPLICANT HAS REFERRED TO AN ALLEGED REFUSAL BY THE RESPONDENT TO PROVIDE IT WITH A LIST OF EMPLOYEES COMING WITHIN THE PROPOSED BARGAINING UNIT. THE BOARD'S POLICY IN THIS REGARD HAS BEEN THAT DURING THE COURSE OF THE HEARING BEFORE THE EXAMINER ON THE MATTER OF THE LIST OF PERSONS WITHIN THE BARGAINING UNIT THE REPRESENTATIVE OF THE APPLICANT IS TO BE PERMITTED TO EXAMINE THE EXAMINER'S LIST CONTAINING THE NAMES OF THE EMPLOYEES OF THE RESPONDENT WITHIN THE PROPOSED BARGAINING UNIT. AT THE CONCLUSION OF THE HEARING THE LIST IS TO BE RETAINED BY THE EXAMINER.
4. THE EXAMINER IS DIRECTED TO PROCEED WITH THE HEARING OF THIS MATTER MAKING SUCH RULINGS WITH RESPECT TO THE RECEPTION OF EVIDENCE AS ARE NECESSARY HAVING IN MIND THE FOREGOING POLICIES.

12467-66-R: DIVISION 1524, AMALGAMATED TRANSIT UNION, TORONTO, ONTARIO  
(APPLICANT) v. TORONTO TRANSIT COMMISSION (RESPONDENT) v. GROUP OF EMPLOYEES  
(OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. W. FORGIE AND H. F. IRWIN.

APPEARANCES AT HEARING: H. M. POLLIT AND SIDNEY HARE FOR THE APPLICANT,  
F. G. HAMILTON, H. E. KING AND W. F. BRUNDRITT FOR THE RESPONDENT,  
FREDERICK RAINE, JOSEPH HEANEY AND ROBERT HASTINGS FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:  
FEBRUARY 22, 1967.

1.. THE APPLICANT HAS APPLIED FOR A UNIT OF ALL UNIFORMED EMPLOYEES OF  
THE RESPONDENT PRESENTLY DESIGNATED AS INSPECTORS AND ALL UNIFORMED EMPLOYEES  
OF THE RESPONDENT PRESENTLY DESIGNATED AS DISPATCHERS.

2. THE BOARD AUTHORIZED ITS EXAMINER TO INQUIRE INTO AND REPORT TO  
THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF PERSONS DESIGNATED BY THE  
RESPONDENT AS UNIFORMED INSPECTORS AND UNIFORMED DISPATCHERS, AND FOLLOWING  
THE SERVICE OF THE REPORT OF THE EXAMINER DATED JANUARY 25TH, 1967, THIS  
MATTER CAME ON FOR HEARING TO HEAR REPRESENTATIONS OF THE PARTIES CONCERNING  
WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE CONTAINED IN THE EXAMINER'S  
REPORT.

3. THE PARTIES AGREED THAT WHATEVER DETERMINATION WAS MADE BY THE  
BOARD WITH RESPECT TO THE PERSONS CLASSIFIED BY THE RESPONDENT AS UNIFORMED  
INSPECTORS WOULD APPLY TO PERSONS CLASSIFIED BY THE RESPONDENT AS UNIFORMED  
DISPATCHERS.

4. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE  
EXAMINER AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE  
BOARD FINDS THAT THE UNIFORMED INSPECTORS SPEND 100 PER CENT OF THEIR TIME  
SUPERVISING EMPLOYEES OF THE RESPONDENT WHO ARE CURRENTLY BARGAINED FOR BY  
THE APPLICANT AND NO WORK IS PERFORMED BY THE UNIFORMED INSPECTORS WHICH IS  
ALSO PERFORMED BY THE PERSONS THEY SUPERVISE.

5. THE UNIFORMED INSPECTORS HAVE THE RESPONSIBILITY TO MAKE EFFECTIVE  
RECOMMENDATIONS WITH RESPECT TO THE MANNER IN WHICH THE WORK IS PERFORMED,  
THE NUMBER OF PERSONS PERFORMING THE WORK AND DISCIPLINARY MATTERS AT THEIR  
DISCRETION. THE UNIFORMED INSPECTORS HAVE EFFECTIVE CONTROL OVER THE  
OPERATORS EMPLOYED BY THE RESPONDENT IN THE PERFORMANCE OF THEIR WORK, THE  
EFFICIENCY OF THE SERVICE PROVIDED BY THE OPERATORS AND THEY ALSO ARE RE-  
QUIRED TO ENFORCE THE RESPONDENT'S RULES AND REGULATIONS.

6. HAVING REGARD TO ALL THE FUNCTIONS PERFORMED BY THE UNIFORMED  
INSPECTORS AND ESPECIALLY THE FACT THAT 100 PER CENT OF THEIR TIME IS  
DEVOTED TO SUPERVISION OF EMPLOYEES, AND HAVING REGARD FOR THE REASONS FOR  
DECISION OF THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B.  
MONTHLY REPORT, SEPTEMBER 1966, P. 379, THE BOARD FINDS THAT PERSONS CLASSI-  
FIED BY THE RESPONDENT AS UNIFORMED INSPECTORS AND UNIFORMED DISPATCHERS

EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT APPROPRIATE FOR INCLUSION IN ANY BARGAINING UNIT.

7. THIS APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER D. W. FORGIE: FEBRUARY 22, 1967.

HAVING REGARD TO ALL THE EVIDENCE, I WOULD FIND THAT THE UNIFORMED INSPECTORS AND THE UNIFORMED DISPATCHERS IN THE EMPLOY OF THE RESPONDENT DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE EMPLOYEES OF THE RESPONDENT ELIGIBLE FOR INCLUSION IN A BARGAINING UNIT. ACCORDINGLY, SUBJECT TO THE APPLICANT HAVING THE REQUISITE MEMBERSHIP EVIDENCE, I WOULD HAVE CERTIFIED THE APPLICANT.

12508-66-R: CANADIAN UNION OF GENERAL EMPLOYEES CHARTERED BY THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE SALVATION ARMY GRACE HOSPITAL (RESPONDENT). V. CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL 929 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN SCOTT AND JOHN SULLIVAN FOR THE APPLICANT, H. M. PAYETTE AND MISS M. LEITHEAD FOR THE RESPONDENT, L. A. MACLEAN AND C. F. KITCHEN FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 16, 1967.

2. THE INTERVENER MADE ALLEGATIONS THAT TWO OF THE PERSONS WHO WERE CLAIMED BY THE APPLICANT AS MEMBERS DID NOT PAY ANY MONEY ON THEIR OWN BEHALF ON ACCOUNT OF INITIATION FEE. THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THESE ALLEGATIONS AND WHILE THE TWO PERSONS IN QUESTION DENIED PAYING ANY MONEY TO THE APPLICANT WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED ON THEIR BEHALF, THE EVIDENCE WAS SUCH THAT ALTHOUGH A DOUBT HAS BEEN CAST WITH RESPECT TO THE MEMBERSHIP EVIDENCE SUBMITTED ON THEIR BEHALF, THE EVIDENCE WAS NOT CONCLUSIVE OF THE ALLEGATION THAT NO MONEY WAS IN FACT PAID BY THEM. EVEN IF THE TWO DOCUMENTS IN QUESTION WERE DISCOUNTED THE APPLICANT STILL CLAIMED AS MEMBERS MORE THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY.

3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE, THE BOARD IS NOT SATISFIED THAT THE APPLICANT OR ANY OF ITS OFFICERS ATTEMPTED TO ENGAGE IN A SCHEME TO DEFRAUD THE BOARD, AND, ACCORDINGLY, THE BOARD IS OF OPINION THAT ANY DOUBT WITH RESPECT TO THE APPLICANT'S MEMBERSHIP EVIDENCE CAN BE RESOLVED BY COUNTING THE REPRESENTATION VOTES CAST IN THIS CASE.



4. WHILE THE INTERVENER MADE ALLEGATIONS THAT THE APPLICANT PUBLISHED PROPAGANDA AND ELECTIONEERING MATERIAL DURING THE PROHIBITIVE TIME IMMEDIATELY PRECEDING THE TAKING OF THE REPRESENTATION VOTE, THE INTERVENER, ALTHOUGH GIVEN AN OPPORTUNITY TO DO SO, WAS UNWILLING TO CALL EVIDENCE WITH RESPECT TO THESE ALLEGATIONS AT THE HEARING OF THIS MATTER. THE INTERVENER'S ALLEGATION WITH RESPECT TO THE VIOLATION OF THE "SILENT PERIOD" BY THE APPLICANT ARE ACCORDINGLY DISMISSED.

5. THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

6. THE BOARD DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE IN THE PRE-HEARING REPRESENTATION VOTE TO BE COUNTED AND REPORT TO THE BOARD.

12591-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. FRANCON (1966) LIMITED (RESPONDENT) V. TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS. I.B. OF T. (INTERVENER).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND R. W. TEAGLE.

APPEARANCES AT HEARING: A. LALONDE FOR THE APPLICANT,  
R. LACHAPELLLE, B. GIGUERE AND P. C. BLAISE FOR THE RESPONDENT,  
I. J. THOMSON AND W. CASEY FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 16, 1967.

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3. THIS APPLICATION IS MADE PURSUANT TO THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. THE RESPONDENT SUBMITS THAT BECAUSE THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE WORKING ON THE RECONSTRUCTION OF A CEMENT PLANT OWNED BY THE RESPONDENT AT BELLS CORNER RATHER THAN ON A CONSTRUCTION PROJECT FOR A COMMERCIAL CLIENT OF THE RESPONDENT, THE APPLICATION DOES NOT FALL WITHIN THE PURVIEW OF THE CONSTRUCTION INDUSTRY. SINCE THE RESPONDENT IS CLEARLY ENGAGED IN THE OPERATION OF A BUSINESS IN THE CONSTRUCTION INDUSTRY, IN OUR OPINION, THE FACT THAT THE EMPLOYEES IN QUESTION ARE WORKING ON A PROJECT OWNED BY THE RESPONDENT, AS OPPOSED TO A PROJECT FOR A CLIENT, IS OF NO RELEVANCE. THE BOARD THEREFORE FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES COMPOSED OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND

PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

5. THE RESPONDENT INFORMED THE BOARD AT THE HEARING IN THIS MATTER THAT, AS OF JANUARY 1ST, 1966, IT ACQUIRED ALL OF THE ASSETS AND LIABILITIES OF OTTAWA PRE-MIXED CONCRETE LIMITED. THE RESPONDENT THEREFORE SUBMITS THAT IT IS THE SUCCESSOR EMPLOYER TO OTTAWA PRE-MIXED CONCRETE LIMITED. NEITHER THE APPLICANT NOR THE RESPONDENT CHALLENGED THE RESPONDENT'S SUBMISSION. THE APPLICANT ALSO DID NOT DISPUTE THE CONTENTION OF THE RESPONDENT AND THE INTERVENER THAT THEY ARE PARTIES TO A COLLECTIVE AGREEMENT, THE TERMS AND CONDITIONS OF WHICH ARE IDENTICAL TO THE COLLECTIVE AGREEMENT ENTERED INTO BY THE INTERVENER AND OTTAWA PRE-MIXED CONCRETE LIMITED, EFFECTIVE FROM OCTOBER 15TH, 1965 TO FEBRUARY 28TH, 1967. BY THAT AGREEMENT OTTAWA PRE-MIXED CONCRETE LIMITED RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR ALL OF ITS EMPLOYEES AT OTTAWA, WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL.

6. WITHOUT MAKING ANY FINDINGS, LET US ASSUME THAT THE RESPONDENT IS THE SUCCESSOR EMPLOYER TO OTTAWA PRE-MIXED CONCRETE LIMITED AND THAT THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT COVERING ALL OF THE RESPONDENT'S EMPLOYEES AT OTTAWA. IF THE BOARD WERE TO GRANT ITS REGULAR GEOGRAPHIC AREA THAT IS SOUGHT BY THE APPLICANT, WHICH INCLUDES OTTAWA, THERE WOULD BE A POTENTIAL CONFLICT OF BARGAINING RIGHTS CLAIMED BY THE APPLICANT AND THE INTERVENER IN THE EVENT THAT THE RESPONDENT DID EMPLOY CARPENTERS IN OTTAWA AT SOME LATER PERIOD OF TIME. MOREOVER, BECAUSE OF THE FACT THERE ARE NO CARPENTERS NOW EMPLOYED BY THE RESPONDENT AT OTTAWA, THIS POSSIBLE CONFLICT CANNOT BE RESOLVED BY A REPRESENTATION VOTE BETWEEN THE APPLICANT AND THE INTERVENER AT THIS TIME OR IN THE FORESEEABLE FUTURE.

7. ACCORDINGLY, HAVING REGARD TO ALL THE VERY SPECIAL CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING CONSTRUCTION IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. WE WOULD MENTION THAT THE RESPONDENT IS A SIGNATORY TO A COLLECTIVE AGREEMENT BETWEEN THE NATIONAL CAPITAL ROAD BUILDERS ASSOCIATION AND A COUNCIL OF TRADE UNIONS ACTING AS THE REPRESENTATIVES AND AGENTS OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 AND INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1250, EFFECTIVE FROM APRIL 15TH, 1966 TO MARCH 1ST, 1967. THE MEMBERS OF THE ASSOCIATION, WHO ARE SIGNATORIES TO THE AGREEMENT, RECOGNIZE THE COUNCIL OF TRADE UNIONS AS BARGAINING AGENT FOR ALL EMPLOYEES COVERED BY CLASSIFICATIONS SET OUT IN SCHEDULES ATTACHED TO THE AGREEMENT WHILE WORKING WITHIN THE NATIONAL CAPITAL COMMISSION AREA, WHICH INCLUDES BELLS CORNER. IT MAY BE THAT THE APPLICANT HAS A CLAIM TO JURISDICTION FOR WORK DONE BY PERSONS IN OCCUPATIONAL CLASSIFICATIONS SET OUT IN THE SCHEDULES ATTACHED TO THE NATIONAL CAPITAL ROAD BUILDERS ASSOCIATION COLLECTIVE AGREEMENT. BY CONFINING THE SCOPE OF THE BARGAINING UNIT TO "CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING CONSTRUCTION", HOWEVER, THE POSSIBILITY OF OVERLAPPING JURISDICTIONAL CLAIMS IS REMOVED.

IT FOLLOWS THEREFORE THAT THE NATIONAL CAPITAL ROAD BUILDERS ASSOCIATION AGREEMENT CANNOT HAVE ANY EFFECT ON THE INSTANT APPLICATION.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12666-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: E. J. CALANDRO AND P. V. GRASSO FOR THE APPLICANT, R. J. GALLIVAN, D. T. RATTRAY AND F. W. WHITTAM FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 23, 1967.

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2. THE APPLICANT IS APPLYING FOR A UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT IN ITS PLANT SERVICE LABORATORY AT ITS YORK WORKS IN METROPOLITAN TORONTO.

3. THE HOURLY RATED, OR PLANT EMPLOYEES AND THE OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, AS WELL AS THE RESPONDENT'S STATIONARY ENGINEERS, ARE COVERED BY EXISTING COLLECTIVE AGREEMENTS. NO BARGAINING RIGHTS ARE HELD BY ANY TRADE UNION, HOWEVER, FOR THE EMPLOYEES THE APPLICANT IS SEEKING IN THIS APPLICATION OR FOR THE EMPLOYEES OF THE RESPONDENT IN ITS PAINT RESEARCH LABORATORY, STATISTICAL QUALITY CONTROL SECTION OR ITS PROCESS ENGINEERING SECTION. THE EVIDENCE REVEALS THAT THE PLANT SERVICE LABORATORY EMPLOYEES AND THE THREE OTHER GROUPS OF EMPLOYEES OF THE RESPONDENT FOR WHOM NO BARGAINING RIGHTS EXIST, WHILE PERFORMING DISTINCT AND DIFFERENT FUNCTIONS, ALL THE GROUPS ARE ESSENTIALLY ENGAGED IN SOME FORM OF QUALITY CONTROL OR RELATED WORK AT VARIOUS STAGES IN THE RESPONDENT'S MANUFACTURING PROCESSES.

4. IN LIGHT OF ALL THE EVIDENCE, WE FIND THAT THE UNIT SOUGHT BY THE APPLICANT IS NOT AN APPROPRIATE UNIT BY ITSELF FOR COLLECTIVE BARGAINING. WHILE IT IS NOT NECESSARY FOR THE BOARD TO DETERMINE AN APPROPRIATE UNIT IN THIS APPLICATION, IT WOULD APPEAR THAT THE APPROPRIATE UNIT WOULD BE A TAG-END UNIT COMPOSED OF ALL OF THE EMPLOYEES OF THE RESPONDENT NOT ALREADY COVERED BY EXISTING COLLECTIVE AGREEMENTS.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

12674-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. G & H STEEL SERVICE OF CANADA LTD., 7 PHARMACY AVENUE, TORONTO, ONTARIO (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFE AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 7, 1967.

1. THE ONLY EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT TRADE UNION IN SUPPORT OF THE APPLICATION CONSISTS OF OFFICIAL RECEIPTS SIGNED BY THE PERSON COLLECTING THE MONEY AND BEARING THE COUNTERSIGNATURES OF THE PERSONS FROM WHOM THE MONEY WAS COLLECTED. THE APPLICANT DID NOT FILE APPLICATION CARDS SIGNED BY THE EMPLOYEES AND THERE IS NO OTHER EVIDENCE OF MEMBERSHIP OR DESIRE FOR MEMBERSHIP FILED BY THE APPLICANT FOR THE PERSONS WHO COUNTER-SIGNED THE RECEIPTS.

2. THE FACTS IN THIS CASE RESPECTING MEMBERSHIP ARE IDENTICAL WITH THOSE IN THE McNAMARA CONSTRUCTION OF ONTARIO LTD. CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER, 1963, P. 309. IN THAT CASE THE BOARD HELD THAT THE EVIDENCE OF MEMBERSHIP DID NOT MEET THE BOARD'S STANDARDS REQUIRED IN THESE MATTERS.

3. IN THESE CIRCUMSTANCES THE APPLICATION IS DISMISSED.

12675-66-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, LOCAL 280, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. SKYLINE HOTELS (CANADA) LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND O. HODGES.

APPEARANCES AT HEARING: IAN SCOTT, TERRY MEAGHER AND ERNIE BURCHELL FOR THE APPLICANT, AND ROSS O. WOODS FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 23, 1967.

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2. THIS IS AN APPLICATION FOR CERTIFICATION.

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4. THE APPLICANT IS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS WITH EXCEPTIONS NOT HERE MATERIAL. HAVING REGARD TO THE DECISION OF THE BOARD IN THE HAROLD GROSS LIMITED CASE, O.L.R.B. MONTHLY REPORT,



AUGUST 1965, P. 375, IT WOULD SEEM THAT SUCH A BARGAINING UNIT WOULD INCLUDE WAITRESSES. IN THE HAROLD GROSS LIMITED CASE THE BOARD, DEALING WITH SUCH A BARGAINING UNIT STATED AS FOLLOWS:-

THE BOARD'S CERTIFICATE CONFERS BARGAINING RIGHTS UPON THE APPLICANT NOT WITH RESPECT TO A PARTICULAR GROUP OF INDIVIDUALS BUT RATHER WITH RESPECT TO THE CLASS OF PERSONS IN THE OCCUPATIONS THERE DESCRIBED EVEN THOUGH MEMBERSHIP OF THIS CLASS MAY VARY FROM TIME TO TIME. EXCEPT WHERE THE CIRCUMSTANCES CLEARLY INDICATE OTHERWISE, THE SEX OF PERSONS PERFORMING TASKS WITHIN THE SCOPE OF THESE OCCUPATIONS IS NOT MATERIAL. THE BARGAINING UNIT, THEREFORE, MAY INCLUDE FEMALE AS WELL AS MALE PERSONS. IN PARTICULAR, THE TERM "BEVERAGE WAITERS" MAY REFER TO ANY PERSONS, MALE OR FEMALE, WHO PERFORM THE TASKS OF WAITERS WITH RESPECT TO ALCOHOLIC OR OTHER BEVERAGES.

5. THE BARGAINING RIGHTS OF THE APPLICANT IN THE INSTANT CASE, HOWEVER, FLOW FROM A RECOGNITION CLAUSE CONTAINED IN A COLLECTIVE AGREEMENT MADE BETWEEN THE APPLICANT AND THE RESPONDENT. SUCH A BARGAINING UNIT WOULD, AS WE HAVE INDICATED, NORMALLY BE CONSTRUED AS INCLUDING FEMALE AS WELL AS MALE PERSONS. HOWEVER, THE COLLECTIVE AGREEMENT WAS THE SUBJECT OF ARBITRATION PROCEEDINGS, AND IT WAS THERE DETERMINED THAT THE BARGAINING UNIT DID NOT INCLUDE FEMALE PERSONS. THE ARBITRATION AWARD IS NOT BEFORE US AND WE HAVE NO KNOWLEDGE AS TO THE CIRCUMSTANCES WHICH THE BOARD OF ARBITRATION MAY HAVE CONSIDERED IN REACHING ITS AWARD. IT MAY BE THAT THE PARTIES HAD THEMSELVES PUT A CONSTRUCTION ON THE AGREEMENT DIFFERENT FROM THAT WHICH WE HAVE SUGGESTED. IN ANY EVENT, THE AWARD OF THE BOARD OF ARBITRATION IS FINAL AND BINDING, AND IT IS NOW THE CASE THAT THE APPLICANT DOES NOT REPRESENT FEMALE PERSONS COMING WITHIN THE CLASSIFICATIONS MENTIONED.

6. HAVING REGARD TO THE CIRCUMSTANCES OF THE INSTANT CASE, THE BOARD FINDS THAT ALL FULL-TIME AND PART-TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS OF THE FEMALE SEX IN THE EMPLOY OF THE RESPONDENT AT ITS SKYLINE HOTEL IN METROPOLITAN TORONTO, SAVE AND EXCEPT HEADWAITERS AND PERSONS ABOVE THE RANK OF HEADWAITER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. AT THE HEARING OF THIS MATTER, THE BOARD HEARD AN AGREED STATEMENT OF FACTS RELATING TO THE EMPLOYMENT OF MISS C. FAIRFIELD. THIS PERSON, WHO HAD BEEN A FULL-TIME EMPLOYEE OF THE RESPONDENT SOME MONTHS AGO, RETURNED TO THE EMPLOY OF THE RESPONDENT AS A PART-TIME EMPLOYEE COMMENCING ON JANUARY 28TH, 1967. THIS APPLICATION WAS MADE ON JANUARY 31ST. MISS FAIRFIELD WHO WAS NOT AT WORK ON THE DATE OF THE APPLICATION, HAS REGULARLY WORKED AS A PART-TIME EMPLOYEE SINCE JANUARY 28TH. THE BOARD FINDS THAT MISS C. FAIRFIELD WAS AN EMPLOYEE IN THE BARGAINING UNIT ON THE DATE OF THE APPLICATION.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

12676-66-R: UNION OF NURSING ASSISTANTS (APPLICANT) v. ESSEX HEALTH ASSOCIATION (RESPONDENT) v. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL UNION #210 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: R. E. BURNELL FOR THE APPLICANT,  
B. M. W. PAULIN AND G. PICKARD FOR THE RESPONDENT,  
MARTIN LEVINSON AND A. HEARN FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 21, 1967.

1. THE INTERVENER IN THIS MATTER FILED WITH ITS INTERVENTION A MEMBERSHIP CARD SIGNED BY ONE OF THE PERSONS WHOSE NAME APPEARED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. IT WAS POINTED OUT AT THE HEARING THAT THIS EMPLOYEE WAS ABSENT FROM WORK BY REASON OF ILLNESS FOR A PERIOD OF APPROXIMATELY FOURTEEN DAYS PRIOR TO THE MAKING OF THE APPLICATION AND WAS NOT EXPECTED TO RETURN TO WORK UNTIL A MONTH AND A HALF AFTER THE DATE OF MAKING THE APPLICATION. THE INTERVENER WAS NOT APPLYING TO BE CERTIFIED FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED BUT WISHED TO TAKE PART IN THESE PROCEEDINGS IN ORDER TO MAKE REPRESENTATIONS CONCERNING THE STATUS OF THE APPLICANT AND THE APPROPRIATENESS OF THE BARGAINING UNIT.

2. THE APPLICANT OBJECTED TO THE INTERVENER'S PRESENCE AS A PARTY IN THESE PROCEEDINGS ON THE BASIS THAT THE INTERVENER HAD NOT SHOWN A SUFFICIENT INTEREST TO PERMIT IT TO TAKE PART IN THESE PROCEEDINGS.

3. AS INDICATED ABOVE, THE INTERVENER FILED A MEMBERSHIP CARD ON BEHALF OF ONE OF THE EMPLOYEES WHOSE NAME APPEARED ON THE LIST FILED BY THE RESPONDENT. THIS PERSON WOULD NOT BE CONSIDERED TO BE AN EMPLOYEE FOR THE PURPOSE OF DETERMINING THE APPLICANT'S MEMBERSHIP POSITION, DUE TO THE FACT THAT HE WAS NOT AT WORK ON THE DATE THE APPLICATION WAS MADE AND WAS NOT EXPECTED TO RETURN TO WORK UNTIL MORE THAN ONE MONTH HAD ELAPSED FOLLOWING THE MAKING OF THE APPLICATION. HOWEVER, WHILE THE PERSON IS NOT CONSIDERED TO BE AN EMPLOYEE FOR THE PURPOSE OF THE COUNT, HE IS AN EMPLOYEE FOR OTHER PURPOSES INCLUDING THE RIGHT TO MAKE REPRESENTATIONS IN THESE PROCEEDINGS. THE EMPLOYEE SIGNED A MEMBERSHIP CARD WHICH AUTHORIZED THE INTERVENER TO REPRESENT

HIM. SINCE THIS CARD IS NOT BEING USED FOR THE PURPOSE OF AN APPLICATION FOR CERTIFICATION BY THE INTERVENER, BUT IS BEING USED MERELY AS EVIDENCE OF AN INTEREST IN THESE PROCEEDINGS, THE BOARD DOES NOT REQUIRE EVIDENCE OF MONEY PAYMENT NOR DOES IT REQUIRE THAT THE CARD BE SUPPORTED BY A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8). THE INTERVENER THEREFORE HAS THE RIGHT TO REPRESENT THIS EMPLOYEE'S INTERESTS IN THESE PROCEEDINGS AND TO TAKE PART IN THESE PROCEEDINGS AS A PARTY. IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE TO PERMIT A TRADE UNION TO INTERVENE IN AN APPLICATION FOR CERTIFICATION SO LONG AS THAT TRADE UNION COULD DEMONSTRATE THAT IT HAD AN INTEREST IN THE PROCEEDINGS EVEN THOUGH THAT INTEREST WAS RESTRICTED TO THE REPRESENTATION OF ONLY ONE OF THE EMPLOYEES WHO WOULD BE ELIGIBLE FOR COLLECTIVE BARGAINING IN THE UNIT CLAIMED BY AN APPLICANT.

4. FOR THE ABOVE REASONS AND FOR THE REASONS GIVEN ORALLY AT THE HEARING IN THIS MATTER, THE BOARD FINDS THAT THE INTERVENER HAS DEMONSTRATED A SUFFICIENT INTEREST IN THESE PROCEEDINGS TO PERMIT IT TO PARTICIPATE AS A PARTY.

5. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

6. MR. A. A. MORROW, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS CASE AND IN PARTICULAR ON THE COMMUNITY OF INTEREST SHARED BY THE REGISTERED NURSING ASSISTANTS WITH OTHER EMPLOYEES OF THE RESPONDENT AND IN ADDITION TO INQUIRE INTO WHICH EMPLOYEES, IF ANY, WOULD BE ELIGIBLE FOR INCLUSION IN A "TAG END UNIT" WITH THE REGISTERED NURSING ASSISTANTS.

12687-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CHEMICAL EQUIPMENT FABRICATORS LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: D. M. STOREY AND O. URBANOVICS FOR THE APPLICANT,  
J. E. NESBITT AND H. A. GREGORY FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 22, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. IT APPEARED THAT THE INFORMATION CONTAINED IN THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) WAS BASED ON AN EXAMINATION OF THE STATEMENTS CONTAINED IN THE MEMBERSHIP APPLICATION AND RECEIPT CARDS FILED BY

THE APPLICANT IN THIS MATTER. THE COMBINATION APPLICATION RECEIPT CARDS CONTAINED THE FOLLOWING STATEMENTS:

I HEREBY REQUEST AND ACCEPT MEMBERSHIP IN THE UNITED STEELWORKERS OF AMERICA, AND OF MY OWN FREE WILL HEREBY AUTHORIZE THE UNITED STEELWORKERS OF AMERICA, ITS AGENTS OR REPRESENTATIVES, TO ACT FOR ME AS A COLLECTIVE BARGAINING AGENCY IN ALL MATTERS PERTAINING TO RATES OF PAY, WAGES, HOURS OF EMPLOYMENT, AND TO ENTER INTO CONTRACTS WITH MY EMPLOYER COVERING ALL SUCH MATTERS.

DATE

SIGNATURE OF APPLICANT

I HEREBY ACKNOWLEDGE THAT I HAVE PAID THE SUM OF \$1.00 ON ACCOUNT OF INITIATION FEES IN THE UNITED STEELWORKERS OF AMERICA.

DATE

SIGNATURE OF APPLICANT

I HEREBY CERTIFY THAT I HAVE RECEIVED THE SUM OF \$1.00 ON ACCOUNT OF INITIATION FEES FOR THE UNITED STEELWORKERS OF AMERICA FROM THE PERSON WHOSE SIGNATURE APPEARS ABOVE.

DATE

SIGNATURE OF COLLECTOR

4. IN THIS MATTER THE COLLECTORS HAVE CERTIFIED THAT THEY HAVE RECEIVED THE SUM OF \$1.00 ON ACCOUNT OF INITIATION FEES FROM THE PERSON WHOSE SIGNATURE APPEARS ON THE CARD.

5. USUALLY, THE INFORMATION CONTAINED IN FORM 8 IS BASED ON ORAL INQUIRIES MADE OF THE COLLECTORS. THE ORAL INQUIRIES WOULD REVEAL THE INFORMATION WHICH IS CONTAINED IN WRITING IN THE CERTIFICATE SIGNED BY THE COLLECTOR IN THE INSTANT CASE. WHILE SUCH ORAL INQUIRIES HAVE ALWAYS SATISFIED THE BOARD, IT WOULD APPEAR TO BE EQUALLY, IF NOT MORE, SATISFACTORY TO OBTAIN THE INFORMATION USUALLY OBTAINED THROUGH ORAL INQUIRY BY WRITTEN ASSURANCES FROM THE COLLECTOR AS WAS DONE IN THIS CASE.

6. THE BOARD IS THEREFORE SATISFIED THAT THE INFORMATION CONTAINED IN THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, BASED ON THE KNOWLEDGE OBTAINED CONCERNING THE COLLECTORS AS INDICATED ABOVE, SATISFIES THE REQUIREMENTS OF FORM 8.

7. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.



12732-66-R: INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL #1494 (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: D. CAIRNS FOR THE APPLICANT,  
L. R. MAILLOUX, F. HODGES AND W. JEMISON FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 28, 1967.

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3. THE BOARD FURTHER FINDS THAT ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT CONSISTS OF MEMBERSHIP DUES BOOKS. THE BOOKS, HOWEVER, DO NOT BEAR THE SIGNATURE OF THE EMPLOYEES ON WHOSE BEHALF THEY ARE SUBMITTED. SUBSECTION 1 OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT EVIDENCE OF MEMBERSHIP IN A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION UNLESS THE EVIDENCE IS IN WRITING, SIGNED BY THE EMPLOYEES. THE BOARD THEREFORE CANNOT ACCEPT THE UNSIGNED MEMBERSHIP DUES BOOKS FILED IN THIS APPLICATION AS EVIDENCE OF MEMBERSHIP IN THE APPLICANT TRADE UNION FOR THE EMPLOYEES CONCERNED (SEE NICK BABIJO, PLASTERING CONTRACTOR CASE, O.L.R.B. MONTHLY REPORT, JUNE 1961, P. 87).

5. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

12734-66-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #625 (FORMERLY-INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL 625) (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL #27 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: O. D'AGOSTINI AND G. FLOOK FOR THE APPLICANT,  
L. R. MAILLOUX, F. HODGES AND W. JEMISON FOR THE RESPONDENT,  
E. B. PARKER, G. E. HARDCASTLE AND G. F. WATKINS FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 28, 1967.

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3. BY VIRTUE OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, THE INTERVENER IS THE BARGAINING AGENT FOR ALL OF THE PERMANENT EMPLOYEES OF THE RESPONDENT ENGAGED IN CARETAKING AND MAINTENANCE. SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT ARE UNION CRAFTSMEN EMPLOYED ON THE MAINTENANCE STAFF IF THEY CONTINUE MEMBERSHIP IN THEIR OWN CRAFT UNION. UNION CRAFTSMEN UNDER THE COLLECTIVE AGREEMENT ARE DEFINED AS CARPENTERS, PLUMBERS, ELECTRICIANS, BRICKLAYERS, PAINTERS AND OTHER SIMILAR WORKERS IN THE CONSTRUCTION TRADES BUT EXCLUDING OPERATING ENGINEERS. ON THE BASIS OF THE ABOVE DESCRIBED BARGAINING UNIT, THE BOARD FINDS THAT THE UNIT OF EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION IN THE INSTANT APPLICATION DOES NOT FORM A PART OF THE UNIT OF EMPLOYEES OF THE RESPONDENT ALREADY REPRESENTED BY THE INTERVENER. WE WOULD MENTION ALSO THAT AT THE HEARING IN THIS MATTER THE INTERVENER DID NOT CLAIM TO REPRESENT CONSTRUCTION LABOURERS.

4. THE BOARD THEREFORE FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE RESPONDENT FILED A LIST OF EMPLOYEES CONTAINING THE NAMES OF TEN EMPLOYEES, ALL OF WHOM ARE INCLUDED IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD. NEITHER THE APPLICANT NOT THE INTERVENER CHALLENGED THE LIST. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF EIGHT OF THE EMPLOYEES WHOSE NAMES APPEAR UPON THE RESPONDENT'S LIST.

6. THE BOARD ACCORDINGLY IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12737-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. WINTER & SON (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: FEBRUARY 24, 1967.

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2. THE APPLICANT FILED TWO COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON.

THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

3. THE RESPONDENT FILED A REPLY AND A LIST OF EMPLOYEES CONTAINING THREE NAMES, BUT FAILED TO FILE SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

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6. THE AREA PROPOSED BY THE APPLICANT CONSISTS OF AN ESTABLISHED BOARD AREA, NAMELY, THE COUNTIES OF BRANT AND NORFOLK (AREA #4), AND PART OF ANOTHER ESTABLISHED BOARD AREA, THE COUNTY OF WENTWORTH. THE RESPONDENT APPEARS TO PROPOSE AREA #4 TOGETHER WITH ANCASTER TOWNSHIP IN THE COUNTY OF WENTWORTH. IT IS NOT THE PRACTICE OF THE BOARD TO ADD PART, OR EVEN THE WHOLE OF AN ESTABLISHED AREA TO ANOTHER ESTABLISHED AREA. ON THE DATE OF THE MAKING OF THE APPLICATION THE EMPLOYEES CONCERNED WERE ALL WORKING AT BRANTFORD. IN THESE CIRCUMSTANCES, THE APPROPRIATE GEOGRAPHIC AREA IN THIS CASE IS THUS AREA #4.

7. THE APPLICANT IN THIS CASE ALSO PROPOSES AN "ALL EMPLOYEE" UNIT. THE RESPONDENT PROPOSES A UNIT CONSISTING OF PLASTERERS AND PLASTERERS' HELPERS. IT HAS BEEN THE PRACTICE OF THE APPLICANT UNION TO ORGANIZE AND BARGAIN COLLECTIVELY ON AN "ALL EMPLOYEE" OR INDUSTRIAL BASIS AND NOT ON A CRAFT BASIS AS IS THE NORMAL PRACTICE IN THE CONSTRUCTION INDUSTRY. THE BOARD HAS RECOGNIZED THIS PRACTICE IN THE PAST AND HAS ISSUED CERTIFICATES TO THE APPLICANT AS WELL AS TO A FEW OTHER UNIONS, IN TERMS OF "ALL EMPLOYEES". HOWEVER, IN RECENT CASES, THE BOARD HAS EXPRESSED CONCERN ABOUT BARGAINING UNITS OF CONSTRUCTION EMPLOYEES BEING ALL INCLUSIVE, AS THEY ARE WHEN DESCRIBED IN TERMS OF "ALL EMPLOYEES". SEE FOR EXAMPLE: MANNIX CO. LTD., O.L.R.B. MONTHLY REPORT, JANUARY, 1965, P. 526 AND A.K. PENNER & SONS LTD., O.L.R.B. MONTHLY REPORT, OCTOBER, 1966, P. 493. SUCH UNITS MAY WELL LEAD TO JURISDICTIONAL DISPUTES PARTICULARLY WHERE ONLY ONE OR TWO TRADES ARE EMPLOYED AT THE DATE OF THE MAKING OF THE APPLICATION OR WHERE AN EMPLOYER DECIDES TO EXPAND THE SCOPE OF HIS BUSINESS. WE HAVE THEREFORE COME TO THE CONCLUSION THAT, AS A GENERAL RULE, UNRESTRICTED ALL EMPLOYEE UNITS SHOULD BE AVOIDED IN CONSTRUCTION INDUSTRY CASES. RATHER, IN OUR VIEW, WHERE A UNION SEEKS A UNIT, OTHER THAN A CRAFT UNIT, THAT UNIT SHOULD BE DESCRIBED IN TERMS OF THE TRADES ON THE JOB AT THE DATE OF THE MAKING OF THE APPLICATION.

IN THE PRESENT CASE THE RESPONDENT, A LATHING AND PLASTERING CONTRACTOR, EMPLOYED A PLASTERER, A PLASTERERS' APPRENTICE AND A LABOURER OR HELPER ON THE DATE OF THE MAKING OF THE APPLICATION. THESE EMPLOYEES WERE ALL ENGAGED IN PLASTERING WORK. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS PLASTERING OPERATIONS IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT PLASTERERS, PLASTERERS' APPRENTICES AND LABOURERS TENDING PLASTERERS ARE INCLUDED IN THE PHRASE "EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS PLASTERING OPERATIONS".

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

#### INDEXED ENDORSEMENTS - TERMINATION

12514-66-R: EMPLOYEES OF CANADIAN RADIATOR MFG. CO. LTD. (APPLICANT) v. INTERNATIONAL HOD CARRIERS AND COMMON LABOURERS UNION OF AMERICA LOCAL 183 (RESPONDENT) v. CANADIAN RADIATOR MFG. CO. LIMITED (INTERVENER).

BEFORE: RORY F. EGAN VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 15, 1967.

1. IN ITS DECISION OF DECEMBER 22ND, 1966, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER. AT THE HEARING, UPON WHICH THE DECISION WAS BASED, NO ONE APPEARED FOR THE RESPONDENT NOR HAD ANY REPLY TO THE APPLICATION BEEN MADE BY THE RESPONDENT.

2. FOLLOWING THE ISSUING OF THE DECISION, THE BOARD WAS ADVISED BY LETTER FROM THE SOLICITORS FOR THE RESPONDENT, DATED DECEMBER 20TH, 1966, THAT THE RESPONDENT HAD RECEIVED NO NOTICE OF THE APPLICATION AND CONSEQUENTLY HAD NOT HAD THE OPPORTUNITY TO FILE A REPLY TO THE APPLICATION HEREIN OR MAKE ITS SUBMISSIONS TO THE BOARD.

3. HAVING REGARD TO THE LETTERS OF THE SOLICITORS FOR THE RESPONDENT, DATED DECEMBER 30TH, 1966, AND JANUARY 13TH, 1967, AND TO THE LETTERS OF THE APPLICANT, DATED JANUARY 5TH AND 17TH, 1967, AND THAT OF THE INTERVENER, DATED JANUARY 12TH, 1967, AND TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD REVOKES ITS DECISION OF DECEMBER 22ND, 1966, AND DIRECTS THAT THE MATTER BE REOPENED SO AS TO PERMIT THE RESPONDENT AN OPPORTUNITY TO FILE A REPLY, PRESENT SUCH EVIDENCE AND MAKE SUCH REPRESENTATIONS AS IT DEEMS NECESSARY.

4. THE MATTER IS REFERRED TO THE REGISTRAR.

12599-66-R: LAWRENCE TAILLON (APPLICANT) v. TEXTILE WORKERS UNION OF AMERICA, A. F. L., C.I.O., C.L.C. (RESPONDENT) v. FIBEREZ OF CANADA LIMITED (INTERVENER).



BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: R. N. ROBERTSON FOR THE APPLICANT,  
T. E. ARMSTRONG AND L. TESSIER FOR THE RESPONDENT, AND  
G. G. SMITH FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 1, 1967.

1. THIS IS AN APPLICATION FOR DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. THERE WERE FILED WITH THE BOARD A NUMBER OF INDIVIDUAL LETTERS, SIGNED BY EMPLOYEES OF THE INTERVENER COMPANY AND SIGNIFYING THAT SUCH EMPLOYEES NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT. THE EVIDENCE GIVEN IN SUPPORT OF THESE DOCUMENTS DISCLOSES THE FOLLOWING CIRCUMSTANCES: IN DECEMBER 1966, CERTAIN EMPLOYEES, NO LONGER WISHING TO BE REPRESENTED BY THE RESPONDENT, SIGNED A LETTER TO THAT EFFECT, DATED DECEMBER 5TH, 1966. THIS DOCUMENT WAS MAILED TO THE BOARD. THE REGISTRAR OF THE BOARD REPLIED, IN ACCORDANCE WITH THE PRACTICE IN SUCH CASES, ADVISING THE SENDER THAT APPLICATIONS FOR TERMINATION OF BARGAINING RIGHTS MUST BE SUBMITTED ON FORM 13, AND ENCLOSING A SUPPLY OF SUCH FORMS, TOGETHER WITH A COPY OF THE LABOUR RELATIONS ACT AND RULES OF PROCEDURE AND REGULATIONS. ON DECEMBER 13TH, 1966, THE SENDER OF THE EARLIER LETTER ADVISED THE BOARD THAT HE WISHED THE EARLIER DOCUMENT TO BE DISREGARDED. ON JANUARY 10TH, 1967, THE APPLICANT IN THE INSTANT CASE COLLECTED DOCUMENTS BEARING THE SIGNATURES OF EMPLOYEES OF THE INTERVENER COMPANY, OBTAINED A BLANK COPY OF FORM 13 FROM THE EMPLOYEE WHO HAD PREVIOUSLY WRITTEN TO THE BOARD, AND ATTENDED AT THE OFFICE OF A SOLICITOR WITH A VIEW TO MAKING THIS APPLICATION. THE APPLICATION WAS MADE AND WAS RECEIVED BY THE BOARD ON JANUARY 13TH, 1967. THE TERMINAL DATE FIXED BY THE REGISTRAR WAS JANUARY 20TH, 1967. THE SOLICITOR ADVISED THE APPLICANT THAT THE DOCUMENTS WERE NOT IN PROPER FORM AND THAT FRESH DOCUMENTS SHOULD BE OBTAINED. THIS WAS DONE, AND A SECOND SET OF DOCUMENTS EACH DATED JANUARY 16TH, 1967, WAS SUBMITTED TO THE BOARD, BEING RECEIVED ON JANUARY 18TH. THE BOARD HEARD EVIDENCE RELATING TO THE ORIGATION AND SIGNING OF BOTH SETS OF DOCUMENTS. THERE HAVE BEEN FILED WITH THE BOARD "REVOCATIONS", SIGNED BY CERTAIN PERSONS WHOSE SIGNATURES APPEAR ON DOCUMENTS SUPPORTING THE APPLICATION, BUT THERE ARE NOT SUFFICIENT OF THESE, ASSUMING THEY WERE GIVEN FULL EFFECT, TO REDUCE THE NUMBER OF PERSONS WHO HAVE EXPRESSED THE DESIRE NO LONGER TO BE REPRESENTED BY THE RESPONDENT TO LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT.

2. COUNSEL FOR THE RESPONDENT URGES THAT THERE IS NOT SUFFICIENT EVIDENCE BEFORE THE BOARD CONCERNING THE ORIGATION AND SIGNING OF THE DOCUMENTS SUPPORTING THE APPLICATION, INASMUCH AS THERE WAS NO EVIDENCE RESPECTING THE DOCUMENTS SUBMITTED TO THE BOARD IN DECEMBER 1966. COUNSEL RELIES ON THE DECISION IN THE WEYERHAEUSER CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, P. 599. IN THAT CASE CERTAIN EMPLOYEES OPPOSING AN APPLICATION FOR CERTIFICATION ATTENDED AT THE OFFICE OF A SOLICITOR, HAVING IN THEIR POSSESSION A NUMBER OF DOCUMENTS INDICATING OPPOSITION TO THE APPLICATION. THE SOLICITOR, HAVING CONSIDERED THE DOCUMENTS, ADVISED THE EMPLOYEES TO CIRCULATE A NEW PETITION, AND THIS WAS DONE. THE BOARD, IN ITS ENDORSEMENT, STATED AS FOLLOWS:-

IN THE INSTANT CASE, IT IS CLEAR THAT THE PETITIONS BEFORE US WERE DERIVED FROM AND ARE DEPENDANT UPON THE EARLIER PETITIONS WHICH WERE TAKEN TO MR. KURISKO'S OFFICE ON THE AFTERNOON OF NOVEMBER 29TH, NO EVIDENCE, HOWEVER, WAS ADDUCED WITH RESPECT TO THE ORIGINATION OF THE EARLIER PETITIONS OR THE CIRCUMSTANCES LEADING UP TO THE FIVE EMPLOYEES ATTENDING AT MR. KURISKO'S OFFICE. THE ONLY KNOWLEDGE THAT CHAPMAN HAD CONCERNING THE EARLIER PETITIONS WAS THAT HE HAD SIGNED ONE OF THEM.

ACCORDINGLY, ON THE EVIDENCE BEFORE US WE FIND THAT THE GROUP OF EMPLOYEES OPPOSING THIS APPLICATION HAVE FAILED TO MEET THE BOARD'S REQUIREMENTS WITH RESPECT TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE PETITIONS. WE ARE NOT THEREFORE PREPARED TO HOLD THAT THE PETITIONS WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION SO AS TO REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

HAVING REGARD TO THE ABOVE FINDING, IT IS NOT NECESSARY FOR THE BOARD TO CONSIDER THE MANNER IN WHICH THE PETITIONS WERE CIRCULATED.

3. IN THE INSTANT CASE, THE DOCUMENTS FILED IN SUPPORT OF THE APPLICATION AND DATED JANUARY 16TH, 1967, ARE CLEARLY "DERIVED FROM AND DEPENDENT ON" THE DOCUMENTS DATED JANUARY 11TH, 1967. IN THIS CASE, HOWEVER, THE BOARD HAS HEARD DIRECT TESTIMONY WITH RESPECT TO THE ORIGINATION AND SIGNING OF BOTH SETS OF DOCUMENTS. THUS, THERE IS BEFORE THE BOARD, IN THE INSTANT CASE, THE VERY SORT OF EVIDENCE WHICH WAS LACKING IN THE WEYERHAEUSER CASE. HAVING REGARD TO THE EVIDENCE, WE CANNOT CONCLUDE THAT THE DOCUMENTS SUBMITTED IN SUPPORT OF THIS APPLICATION WERE DERIVED FROM OR DEPENDENT UPON THE DOCUMENTS WHICH WERE MAILED TO THE BOARD IN DECEMBER 1966. THE INSTANT APPLICATION, IN OUR VIEW, IS SEPARATE AND DISTINCT FROM THE EVENTS WHICH TOOK PLACE IN DECEMBER 1966.

4. HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE INTERVENER COMPANY IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

5. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE INTERVENER COMPANY. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF THE INTERVENER COMPANY WORKING AT ITS CORNWALL PLANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, ON THE DATE HEREOF WHO DO NOT

VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

12673-66-R: RONALD JAMES ROBERTS (ON BEHALF OF A GROUP OF EMPLOYEES)  
(APPLICANTS) v. INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL 222 (RESPONDENT)

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. J. ROBERTS, J. CROOK AND W. QUINN  
FOR THE APPLICANTS, R. WHITE, H. BENSON AND A. TAYLOR FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 22, 1967.

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE PURSUANT TO SECTION 46(3)(B) OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT WAS CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF OSHAWA ENGINEERING & WELDING COMPANY LIMITED AT OSHAWA ON MARCH 14TH, 1966. THE RESPONDENT AND THE COMPANY ENTERED INTO NEGOTIATIONS AND WERE GRANTED CONCILIATION SERVICES. ON JUNE 23RD, 1966 THE RESPONDENT AND THE COMPANY WERE NOTIFIED THAT THE MINISTER DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. ON SEPTEMBER 7TH, THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT ENGAGED IN A LAWFUL STRIKE WHICH WAS STILL CONTINUING ON THE DATE OF THE HEARING IN THIS MATTER ON FEBRUARY 14TH, 1967.

3. SECTION 43(1) IS THE SECTION OF THE ACT WHICH PROVIDES THE SUBSTANTIVE REMEDY TO EMPLOYEES DESIRING TO MAKE APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WHERE NO COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO FOLLOWING CERTIFICATION. THE REMEDY, HOWEVER, IS NOT AVAILABLE TO EMPLOYEES WITHIN A PERIOD OF A YEAR AFTER THE DATE OF CERTIFICATION. IF IT CAN BE SAID THAT SECTION 46(3) DOES GIVE A SUBSTANTIVE REMEDY TO EMPLOYEES SEEKING TERMINATION OF BARGAINING RIGHTS, THAT REMEDY IS ONLY AVAILABLE WHEN THE CONDITION REGARDING TIMELINESS SET FORTH IN SECTION 43(1) IS FULFILLED. THE APPLICANT HAVING MADE THEIR APPLICATION ON JANUARY 30TH, 1967, THAT CONDITION, NAMELY, THE EXPIRY OF A PERIOD OF A YEAR SINCE CERTIFICATION, HAS NOT BEEN FULFILLED. THE BOARD THEREFORE FINDS THAT THE APPLICATION OF THE APPLICANTS IS UNTIMELY.

4. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

INDEXED ENDORSEMENT - SUCCESSOR STATUS

12596-66-R: THE RESILIENT FLOORING CONTRACTORS ASSOCIATION OF ONTARIO (TORONTO SECTION) (APPLICANT) V. THE RESILIENT FLOOR WORKERS UNION, LOCAL 2965, CONFEDERATION OF NATIONAL TRADE UNIONS (RESPONDENT) V. LOCAL UNION NO. 2965, OF TORONTO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ALSO KNOWN AS LOCAL 2965, THE RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O. (PREDECESSOR TRADE UNION).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. W. FORGIE AND R. W. TEAGLE.

APPEARANCES AT HEARING: B. W. BINNING, L. KNIGHT AND BRIAN TAYLOR FOR  
THE APPLICANT, IAN SCOTT, MICHAEL SCANLON AND TED PAYNE FOR THE RESPONDENT,  
T. E. ARMSTRONG AND W. STEFANOVITCH FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: FEBRUARY 6, 1967.

1. AT THE HEARING OF THIS MATTER HELD ON JANUARY 26TH, 1967, A NUMBER  
OF PRELIMINARY MATTERS WERE RAISED. THE FIRST OF THESE INVOLVED AN ALLEGATION  
OF BIAS AGAINST ONE OF THE MEMBERS OF THE BOARD. AFTER HEARING ARGUMENT AND  
AFTER TAKING TIME FOR CONSIDERATION THE BOARD DEALT WITH THE OBJECTION IN THE  
FOLLOWING TERMS:

COUNSEL FOR THE RESPONDENT HAS OBJECTED TO THE  
PRESENCE, ON THE PANEL OF THE BOARD ASSIGNED TO  
THIS MATTER, OF BOARD MEMBER D. W. FORGIE. COUNSEL  
WOULD OBJECT AS WELL TO THE PRESENCE ON THE PANEL  
OF ANY OTHER OF THE BOARD MEMBERS REPRESENTATIVE OF  
EMPLOYEES. THE GROUND OF THE OBJECTION IS THAT BOARD  
MEMBER FORGIE, OR ANY OTHER OF THE BOARD MEMBERS  
REPRESENTATIVE OF EMPLOYEES, IS, BY VIRTUE OF HIS  
TRADE UNION OFFICE OR MEMBERSHIP, BIASSED AGAINST  
THE RESPONDENT. THIS ALLEGED BIAS WOULD ARISE FROM  
THE FACT THAT THE MEMBERS OF THE BOARD REPRESENTATIVE  
OF EMPLOYEES ARE MEMBERS OR OFFICERS OF TRADE UNIONS  
AFFILIATED WITH THE ONTARIO FEDERATION OF LABOUR OR THE  
CANADIAN LABOUR CONGRESS. IT IS ALLEGED THAT THESE  
LATTER ORGANIZATIONS HAVE EXPRESSED THEMSELVES AS  
OPPOSED TO CERTAIN OF THE ORGANIZATIONAL ACTIVITIES  
OF THE CONFEDERATION OF NATIONAL TRADE UNIONS, AN  
ORGANIZATION TO WHICH THE RESPONDENT IS ALLEGED TO BE  
AFFILIATED. WHILE NO PROOF OF SUCH OPPOSITION WAS  
PRESENTED, THE BOARD IS PREPARED TO DEAL WITH MR. SCOTT'S  
OBJECTION ON THE ASSUMPTION THAT SUCH IS THE CASE. IN  
ANY EVENT, THE BOARD WOULD TAKE OFFICIAL NOTICE THAT A  
DEGREE OF ANTAGONISM HAS EXISTED AS BETWEEN THESE  
COMPETING ORGANIZATIONS.

COUNSEL REFERRED TO THE DECISION OF THE THEN CHIEF  
JUSTICE OF THE HIGH COURT IN THE CASE OF SUDBURY GENERAL  
WORKERS UNION V. I.G.A. FOODLINER [1963] 2 O.R. 239,  
61 C.L.L.C. 744. IN THAT CASE, AN ORDER OF PROHIBITION



WAS ISSUED, PREVENTING THE BOARD FROM HEARING AN APPLICATION BROUGHT BEFORE A PANEL OF THE BOARD WHICH INCLUDED BOARD MEMBER D. B. ARCHER, AS A MEMBER REPRESENTATIVE OF EMPLOYEES. MR. ARCHER WAS PRESIDENT OF THE ONTARIO FEDERATION OF LABOUR. IN THAT CAPACITY, HE HAD TAKEN AN OATH OF OFFICE WHICH REQUIRED HIM TO CARRY OUT THE POLICIES OF THE FEDERATION, POLICIES WHICH WERE CLEARLY AND PARTICULARLY ADVERSE TO ONE OF THE PARTIES TO THE APPLICATION THEN BEFORE THE BOARD. ON THESE GROUNDS, IT WAS HELD THAT MR. ARCHER'S PRESENCE ON THE PANEL WAS NOT PROPER.

IN THE INSTANT CASE, THE FACT IS THAT BOARD MEMBER FORGIE IS AN INTERNATIONAL REPRESENTATIVE OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA. THIS UNION IS AFFILIATED WITH THE CANADIAN LABOUR CONGRESS. MR. FORGIE IS NOT AN OFFICER OF THE CANADIAN LABOUR CONGRESS, NOR IS HE A MEMBER OF EITHER OF THE TRADE UNIONS INVOLVED IN THESE PROCEEDINGS. IT IS THE CASE THAT EACH OF THE BOARD'S MEMBERS REPRESENTATIVE OF EMPLOYEES IS ASSOCIATED DIRECTLY OR INDIRECTLY WITH A TRADE UNION WHICH HAS SOME FORM OF AFFILIATION WITH THE ONTARIO FEDERATION OF LABOUR OR THE CANADIAN LABOUR CONGRESS.

IN OUR VIEW, MR. FORGIE'S POSITION WITH THE LABOURERS' INTERNATIONAL UNION DOES NOT SUPPORT THE NECESSARY ASSUMPTION THAT HE IS BIASED WITH RESPECT TO THE INSTANT CASE. THERE IS, OF COURSE, NO SUGGESTION OF ACTUAL, PERSONAL BIAS ON MR. FORGIE'S PART, NOR NEED THERE BE FOR THE OBJECTION TO SUCCEED.

THE BOARD REFERS PARTICULARLY TO THE FOLLOWING REMARKS OF McRUER C.J.H.C., AS HE THEN WAS, IN THE SUDBURY GENERAL WORKERS CASE, REPORTED AT P. 749, OF THE C.L.L.C.:

I WILL ASSUME THAT THE LEGISLATURE CONTEMPLATED THAT THE EMPLOYEES' REPRESENTATIVES ON THE BOARD WOULD BE MEMBERS OF TRADE UNIONS. I DO NOT THINK MR. ARCHER WOULD HAVE BEEN DISQUALIFIED IN THIS CASE MERELY BECAUSE HE HELD MEMBERSHIP IN A TRADE UNION AFFILIATED WITH THE ONTARIO FEDERATION OF LABOUR. THE DISTINCTION BETWEEN MERE MEMBERSHIP AND AN EXECUTIVE RESPONSIBILITY TO CARRY OUT DECLARED POLICIES OF ANY BODY IS WELL DEMONSTRATED IN LEESON V. GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION, L.R. 43 CH. 366. A CAREFUL READING OF THE MAJORITY JUDGMENTS AND THE MINORITY JUDGMENT OF FRY, L.J., WHICH WAS FAVOUR BY DAVEY, L.J. IN ALLINSON V. GENERAL COUNCIL OF MEDICAL EDUCATION AND

REGISTRATION, (1894) 1 Q.B. 750, DEMONSTRATES HOW FINE THE LINE OF DEMARCATION CAN BE. A MAN MIGHT WELL BE A MEMBER OF A TRADE UNION AND BE FREE TO ACT WITH RESPECT TO MATTERS BEFORE THE BOARD AFFECTING ANOTHER TRADE UNION. IT IS, HOWEVER, QUITE A DIFFERENT THING WHERE A MEMBER OF A BOARD HAS A DUAL RESPONSIBILITY, ON THE ONE HAND TO CARRY OUT THE DECLARED POLICIES OF THE ONTARIO FEDERATION OF LABOUR AND ON THE OTHER HAND TO DECIDE IMPARTIALLY ANY MATTERS THAT MAY BE IN CONFLICT WITH THOSE POLICIES. I DO NOT THINK ON ANY RECOGNIZED PRINCIPLE OF LAW APPLICABLE TO JUDICIAL OR QUASI-JUDICIAL TRIBUNALS ONE WHO HAS CLEARLY DIVIDED LOYALTIES AS IN THIS CASE CAN BE PERMITTED TO ACT. WHEN I HAVE SAID THIS I DO NOT WISH IT TO BE TAKEN THAT I MAKE ANY SUGGESTION OF MALA FIDES ON THE PART OF MR. ARCHER. I FEEL QUITE CONFIDENT THAT IF THE MATTER HAD BEEN PRESENTED TO HIM AT THE TIME THE OBJECTION WAS TAKEN IN THE LIGHT THAT I SEE IT, HE WOULD HAVE DISQUALIFIED HIMSELF AND PERMITTED ANOTHER MEMBER OF THE BOARD TO SIT WHO DID NOT HAVE THE SAME RESPONSIBILITIES IN THE ONTARIO FEDERATION OF LABOUR AS HE HAD AND WHO HAD NOT UNDERTAKEN THE SAME SOLEMN OBLIGATIONS THAT HE HAD UNDERTAKEN.

IT SHOULD BE ADDED THAT BOARD MEMBER FORGIE HAS TAKEN NO SUCH SOLEMN OBLIGATION AS THAT TAKEN BY BOARD MEMBER ARCHER IN THE CASE REFERRED TO.

REFERENCE MAY ALSO BE MADE TO THE REMARKS OF ROACH J.A. IN THE ONTARIO COURT OF APPEAL IN THE BRADLEY CASE [1957] O.R. 316, 57 C.L.L.C. 689, 695:

I HAVE HEARD IT SAID THAT THE NOMINEES OF MANAGEMENT AND LABOUR ON THE BOARD "REPRESENT" ONE OR THE OTHER. THIS MAY BE AN APPROPRIATE TIME TO SAY THAT THEY "REPRESENT" NEITHER. AS MEMBERS OF THE BOARD THEY ARE INDEPENDENT OF BOTH. THEY OCCUPY A QUASI-JUDICIAL POSITION AND IN THE DISCHARGE OF THEIR DUTIES THEY MUST ACT JUDICIALLY.

THE OBJECTION IS DENIED.

2. COUNSEL FOR THE RESPONDENT TAKES THE FURTHER OBJECTION THAT THE MATTER IS NOT PROPERLY BEFORE THE BOARD UNDER SECTION 47 OF THE LABOUR RELATIONS ACT. THIS OBJECTION IS BASED ESSENTIALLY ON TWO GROUNDS:

(1) THAT THERE HAS BEEN NO "CLAIM" THAT "BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION" THE RESPONDENT WAS SUCCESSOR TO THE PARTY NAMED IN THIS APPLICATION AS A "PREDECESSOR TRADE UNION" AND THAT, THEREFORE, THE NECESSARY PREREQUISITE TO THE BOARD'S JURISDICTION DOES NOT EXIST, AND (2) THAT THE APPLICANT HAS NOT ASKED FOR THE SORT OF RELIEF AVAILABLE TO A PARTY UNDER SECTION 47; THAT IS, THAT THE BOARD'S JURISDICTION IS TO DECLARE THAT A SUCCESSOR UNION HAS ACQUIRED THE RIGHTS OF ITS PREDECESSOR OR TO DECLARE THAT IT HAS NOT ACQUIRED SUCH RIGHTS AND THAT THE APPLICANT MUST TAKE A POSITION AS TO THE RELIEF WHICH IT SEEKS AND NOT SIMPLY COME TO THE BOARD FOR RESOLUTION OF ITS DILEMMA.

3. FOR THE PURPOSES ONLY OF DEALING WITH THE MOTIONS NOW BEFORE THE BOARD, THE CIRCUMSTANCES AS TAKEN FROM THE MATERIALS FILED AND FROM THE STATEMENTS OF COUNSEL APPEAR TO BE AS FOLLOWS. THE ORGANIZATION DESCRIBED IN THIS APPLICATION AS THE "PREDECESSOR TRADE UNION" IS PARTY TO A COLLECTIVE AGREEMENT WITH THE APPLICANT WHICH AGREEMENT IS BINDING UPON THE TRADE UNION, UPON THE APPLICANT AND ITS MEMBERS, AND UPON ITS MEMBERS' EMPLOYEES COMING WITHIN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT. THIS COLLECTIVE AGREEMENT IS DATED MAY 1ST, 1966 AND IS TO RUN UNTIL APRIL 30TH, 1970. IT IS THE RESPONDENT'S POSITION THAT SOME TIME PRIOR TO DECEMBER 2ND, 1966, THE TRADE UNION PARTY TO THE COLLECTIVE AGREEMENT DID, IN ACCORDANCE WITH THE CONSTITUTIONAL PROVISIONS BY WHICH IT WAS BOUND, DISAFFILIATE ITSELF FROM THE INTERNATIONAL UNION TO WHICH IT HAD PREVIOUSLY BEEN AFFILIATED. THE TRADE UNION HAS SINCE ENTERED INTO AFFILIATION WITH THE CONFEDERATION OF NATIONAL TRADE UNIONS AND, FOR THE PURPOSES OF THIS DETERMINATION, IT MAY BE DESCRIBED AS THE RESPONDENT IS DESCRIBED IN THIS APPLICATION. IT IS THE RESPONDENT'S POSITION THAT IT IS THE ENTITY WHICH IS THE TRADE UNION PARTY TO THE COLLECTIVE AGREEMENT. THE RESPONDENT DOES NOT ASSERT THAT IT IS THE SUCCESSOR TRADE UNION BUT ASSERTS RATHER THAT IT IS THE VERY TRADE UNION WHICH IS A PARTY TO THE AGREEMENT ALBEIT WITH A NEW NAME AND AFFILIATION. THE PREDECESSOR TRADE UNION, ON THE OTHER HAND, DENIES THAT THERE HAS BEEN SUCH A CHANGE AND ASSERTS THAT IT CONTINUES TO BE THE PARTY TO THE COLLECTIVE AGREEMENT. COUNSEL FOR THE PREDECESSOR TRADE UNION SUBMITS THAT IT IS INCUMBENT UPON THE RESPONDENT TO ESTABLISH ITS STATUS AS A TRADE UNION BEFORE THIS BOARD. THE APPLICANT, IT WILL BE APPARENT, IS IN THE UNFORTUNATE POSITION OF HAVING TWO GROUPS OF PERSONS CLAIMING TO BE THE PERSONS WITH WHOM IT SHOULD DEAL WITH RESPECT TO THE COLLECTIVE AGREEMENT. THE APPLICANT IS UNABLE TO DETERMINE WHICH OF THESE GROUPS IS, IN FACT, THE TRADE UNION PARTY TO THE AGREEMENT AND IN ORDER TO RESOLVE THIS DILEMMA SEEKS THE BOARD'S DECLARATION THAT THE RESPONDENT IS OR IS NOT THE SUCCESSOR TRADE UNION.

4. IF THE RESPONDENT IS CORRECT, THEN, OF COURSE, THIS IS NOT A CASE COMING WITHIN SECTION 47(1) -- THAT IS, IT IS NOT A CASE OF THE SUCCESSION OF ONE TRADE UNION TO THE RIGHTS OF ANOTHER. IF THE RESPONDENT IS CORRECT, THIS IS SIMPLY A CASE OF THE CHANGE OF NAME AND AFFILIATION BY AN AUTONOMOUS TRADE UNION WHICH PER SE CONTINUES ITS EXISTENCE THROUGHOUT. THERE IS NO INITIAL ONUS UPON THE RESPONDENT IN PROCEEDINGS SUCH AS THESE TO ESTABLISH SUCH FACT. IT IS RATHER UPON THE APPLICANT TO MAKE OUT A CASE

FOR THE RESPONDENT TO ANSWER IF IT DESIRES TO DO SO. AS TO THE FIRST GROUND OF THE RESPONDENT'S OBJECTION THE ANSWER IS PLAIN. THE APPLICANT IS ENTITLED TO PRESENT EVIDENCE TO ESTABLISH THAT THE RESPONDENT HAS, IN FACT, "CLAIMED" THAT "BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION IT IS THE SUCCESSOR" OF THE TRADE UNION PARTY TO THE COLLECTIVE AGREEMENT. COUNSEL FOR THE RESPONDENT ADMITTED THAT IF THE EVIDENCE ESTABLISHED THAT SUCH A CLAIM HAD BEEN MADE BY THE RESPONDENT HE WOULD NOW BE ESTOPPED FROM RENOUNCING SUCH CLAIM. IN THAT CASE, IF IT WERE TO BE PROVED THAT THE RESPONDENT HAD CLAIMED TO BE THE SUCCESSOR TRADE UNION THEN THERE WOULD BE AN ONUS UPON THE RESPONDENT TO PRESENT EVIDENCE IN SUPPORT OF THE CLAIM OR TO RISK THE POSSIBILITY OF THE BOARD DECLARING THAT IT WAS NOT A SUCCESSOR TRADE UNION. SUCH EVIDENCE WOULD HAVE TO SHOW NOT ONLY THAT THE RESPONDENT WAS THE "SUCCESSOR" BUT ALSO THAT IT WAS A "TRADE UNION" WITHIN THE MEANING OF THE ACT. IN THE EVENT THAT THE RESPONDENT DID SEEK TO PRESENT EVIDENCE TO ESTABLISH THAT IT WAS THE SUCCESSOR TRADE UNION THEN IT WOULD BE NECESSARY FOR IT TO PROVIDE THE PREDECESSOR TRADE UNION WITH PARTICULARS OF THE MATERIAL FACTS RELIED ON.

5. THE POSITION TAKEN BY THE RESPONDENT THAT IT IS, IN FACT, THE TRADE UNION PARTY TO THE COLLECTIVE AGREEMENT MIGHT PROPERLY BE PRESENTED AND SUPPORTED BY EVIDENCE BY WAY OF REPLY TO THE APPLICANT'S CASE OR IN SUPPORT OF THE CONTENTION THAT THE APPLICATION SHOULD BE DISMISSED. AT THIS STAGE IN THE PROCEEDINGS, THERE IS NO ONUS UPON THE RESPONDENT TO PRESENT ANY EVIDENCE.

6. THE SECOND GROUND OF OBJECTION TAKEN BY THE RESPONDENT IS THAT THE APPLICANT MUST TAKE A POSITION WITH RESPECT TO THE PRECISE DECLARATION WHICH IT SEEKS FROM THE BOARD. IN MR. SCOTT'S SUBMISSION, THE APPLICANT IS MERELY SEEKING A DETERMINATION AS TO THE IDENTITY OF THE TRADE UNION PARTY TO THE COLLECTIVE AGREEMENT BY WHICH IT IS BOUND. CERTAINLY, AS WE HAVE INDICATED ABOVE, IF THE APPLICANT FAILS TO ESTABLISH THAT THERE HAS BEEN A CLAIM OF THE SORT REFERRED TO SECTION 47 IT MUST FOLLOW THAT THE APPLICANT CAN FIND NO RELIEF BY WAY OF AN APPLICATION UNDER THIS SECTION. IF, HOWEVER, THE APPLICANT DOES ESTABLISH THE APPROPRIATE "JURISDICTIONAL FACTS" THE BOARD WOULD APPEAR TO HAVE A WIDE DISCRETION WITH RESPECT TO THE MAKING OR THE REFUSAL OF A DECLARATION ON THE QUESTION OF SUCCESSION. IT MAY BE, AS MR. SCOTT ARGUED, THAT ALTERNATIVE REMEDIES EXIST. IF IN THE EVENT THE APPLICANT IS UNABLE TO ESTABLISH THAT A CLAIM OF SUCCESSIONSHIP HAS BEEN MADE BY THE RESPONDENT, THEN IT MAY WELL HAVE TO LOOK TO SUCH REMEDIES. WHERE THE BOARD'S JURISDICTION IS ESTABLISHED, HOWEVER, IN A SITUATION OF THIS SORT WE ARE NOT PERSUADED THAT WE SHOULD DECLINE JURISDICTION BECAUSE OF THE ALLEGED EXISTENCE OF AN ALTERNATIVE REMEDY. FOR ONE THING, IT HAS NOT BEEN DEMONSTRATED THAT A REAL ALTERNATIVE DOES EXIST. FUNDAMENTALLY, THIS IS A CASE INVOLVING THE EXISTENCE OF BARGAINING RIGHTS. QUESTIONS OF BARGAINING RIGHTS -- THEIR EXISTENCE, THEIR TERMINATION, THEIR SCOPE -- BOTH AS BETWEEN TRADE UNIONS AND EMPLOYERS AND AS BETWEEN COMPETING TRADE UNIONS ARE, SPEAKING GENERALLY, THE QUESTIONS WHOSE RESOLUTION IS THE PRIMARY FUNCTION OF THIS BOARD. IT MAY BE OBSERVED THAT THE BOARD MAY EXERCISE ITS DISCRETION UNDER SECTION 47(1) "IN ANY PROCEEDING BEFORE IT OR ON THE APPLICATION OF ANY PERSON OR TRADE UNION



CONCERNED". THIS LANGUAGE CONTEMPLATES THE BOARD'S DISPOSITION OF AN ISSUE SUCH AS THAT IN THE INSTANT CASE EVEN WITHOUT ANY PARTY MAKING AN APPLICATION FOR A SPECIFIC RELIEF. IN ANY EVENT, THERE APPEARS TO US NO SUBSTANTIAL REASON WHY THE APPLICANT SHOULD BE REQUIRED TO CHOOSE AS BETWEEN CONTENDING UNIONS. INDEED, GOOD REASONS DO APPEAR WHY THE APPLICANT SHOULD NOT BE FORCED SO TO CHOOSE. THE LEGISLATION CONTEMPLATES A CONTINUING BARGAINING RELATIONSHIP BETWEEN AN EMPLOYER AND THE BARGAINING AGENT OF ITS EMPLOYEES. THE TAKING OF SIDES IN A MATTER SUCH AS THIS MIGHT WELL JEOPARDIZE SUCH A RELATIONSHIP. IT WOULD BE UNFORTUNATE AND, INDEED, IMPROPER TO FORCE SUCH A CHOICE UPON AN EMPLOYER.

7. IT IS OUR CONCLUSION THAT THIS APPLICATION IS ONE WHICH MAY BE BROUGHT PURSUANT TO SECTION 47 OF THE ACT. THE RESPONDENT'S OBJECTION IS ACCORDINGLY DENIED.

8. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

#### INDEXED ENDORSEMENTS - PROSECUTION

12538-66-U: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC ON BEHALF OF LOCAL 541 (APPLICANT) v. ACME DIVISION POLYGON SERVICES LIMITED, E. C. HAMLIN, AND CHARLES PARENTEAU (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: IAN SCOTT AND J. OSBORNE FOR THE APPLICANT,  
AND P. ISBISTER, E. C. HAMLIN AND C. PARENTEAU FOR THE RESPONDENTS.

DECISION OF THE BOARD: FEBRUARY 10, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT. THE ALLEGED OFFENCE IS THAT THE RESPONDENT, AT A TIME WHEN THE APPLICANT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN A BARGAINING UNIT, BARGAINED WITH PERSONS OTHER THAN THE APPLICANT.

2. IT IS NOT DISPUTED THAT THE APPLICANT WAS AT ALL MATERIAL TIMES ENTITLED TO REPRESENT THE EMPLOYEES OF THE CORPORATE RESPONDENT IN A BARGAINING UNIT. IT IS ALSO AGREED THAT A MEETING TOOK PLACE ON DECEMBER 12TH, 1966, BETWEEN THE RESPONDENTS E.C. HAMLIN, PRESIDENT, AND CHARLES PARENTEAU, PLANT MANAGER, ON BEHALF OF THE CORPORATE RESPONDENT, AND MIKE DEPROSPO, JOE PETERS AND ROY COLLETT, EMPLOYEES OF THE CORPORATE RESPONDENT IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT.

3. ALL THE EVIDENCE HEARD BY THE BOARD WAS OFFERED BY THE APPLICANT. THE RESPONDENTS INDICATED THAT THEY DID NOT WISH TO CALL EVIDENCE.

4. THE EVIDENCE ESTABLISHED THAT THE MEETING OF DECEMBER 12TH, 1966, WAS INITIATED BY THE GROUP OF EMPLOYEES AND NOT BY THE MANAGEMENT. IT ALSO SHOWED THAT THE MAIN PURPOSE OF THE GROUP OF EMPLOYEES IN SEEKING THE MEETING WAS TO SEE IF THEY COULD GET MORE MONEY FROM THE COMPANY.

5. THE WITNESS ROWSKI TESTIFIED THAT FOLLOWING THE MEETING, DEPROSPO SAID TO HER "YOU KNOW, MARIA, YOU ARE GOING TO GET A RAISE". THAT, APPARENTLY, WAS THE EXTENT OF THE CONVERSATION. THE WITNESS STATED THAT DEPROSPO WAS NOT A MEMBER OF MANAGEMENT AND HAD NEVER BEFORE NOTIFIED HER ABOUT RAISES. WILLIAM MANGOLD, WHO WAS ON THE UNION'S BARGAINING COMMITTEE, SAID THAT HE HAD TALKED TO ROY COLLETT FOLLOWING THE MEETING. HE STATED THAT COLLETT SAID THERE WOULD BE A 25% RAISE AND THAT SHEET METAL WORKERS MIGHT GET ANOTHER 10¢ IN THE SPRING. HE SAID THAT, AS OF THE DATE OF THE HEARING, NO RAISE HAD BEEN GIVEN.

6. THE FOREGOING EVIDENCE CAN, OF COURSE, THROW NO DIRECT LIGHT UPON WHAT TRANSPIRED AT THE MEETING BETWEEN THE COMPANY REPRESENTATIVES AND THE GROUP OF EMPLOYEES. ITS SOLE VALUE LIES IN THE INFERENCES THAT MIGHT REASONABLY BE DRAWN FROM IT. ON THAT POINT, BEARING IN MIND THE FACT THAT THE REPORTED CONVERSATIONS TOOK PLACE SOON AFTER THE MEETING, AND ASSUMING, FOR THE MOMENT, THAT THEY WERE CORRECTLY RECOUNTED, IT ALMOST GOES WITHOUT SAYING THAT THEY LEAVE A GREAT DEAL TO BE DESIRED AS SOURCES FROM WHICH IT COULD REASONABLY BE INFERRED THAT "BARGAINING" TOOK PLACE AT THE MEETING.

7. ADDING TO THE APPLICANT'S DIFFICULTIES IN THIS MATTER, IS THE EVIDENCE OF PETERS AND COLLETT, BOTH OF WHOM WERE AT THE MEETING. IT MIGHT BE AS WELL, AT THIS POINT, TO STATE THAT LITTLE CREDENCE IS TO BE ATTACHED TO ANY OF THE EVIDENCE OFFERED BY MIKE DEPROSPO. HE DENIED MAKING THE STATEMENT REPORTED BY ROWSKI AND ALSO STATED THAT NO MONEY WAS MENTIONED DURING THE MEETING WITH THE COMPANY.

8. PETERS TESTIFIED THAT THE PURPOSE OF THE MEETING WAS TO SEE IF THEY COULD GET MORE MONEY OUT OF THE COMPANY. HE TESTIFIED THAT MANAGEMENT SAID, "NO - WE HAVE A CONTRACT WITH THE UNION AND WE PAY ACCORDING TO CONTRACT". HE SAID THE GROUP WERE SEEKING A 25% INCREASE WHICH WOULD GIVE THEM THE SAME RATES AS EMPLOYEES OF THE COMPANY IN ITS OTHER PLANT ACROSS THE ROAD.

9. COLLETT SWORE THAT EVERYONE WAS AWARE OF THE FACT THAT THE GROUP WERE GOING TO TRY TO GET THE WAGES AND BENEFITS PAID AS THE COMPANY'S OTHER PLANT. THERE WAS APPARENTLY A DIFFERENTIAL OF 25% IN FAVOUR OF THE OTHER PLANT. THIS WITNESS STATED THAT THE COMPANY ADVISED THE GROUP THAT IT (THE COMPANY) COULD ONLY BARGAIN WITH THE UNION BARGAINING COMMITTEE AND COULD NOT DISCUSS THE MATTER WITH THE GROUP. THIS CORROBORATES PETERS EVIDENCE. COLLETT'S FURTHER EVIDENCE WAS THAT MR. PARENTEAU READ OUT SECTIONS 49 TO 54 OF THE LABOUR RELATIONS ACT AND TOLD THEM THAT IN THE LIGHT OF THESE SECTIONS IT WAS IMPOSSIBLE TO DEAL WITH THE GROUP. COLLETT REFERRED TO THE SECTIONS AS "RULES".

10. COLLETT DOES NOT DENY TALKING TO MANGOLD AFTER THE MEETING. HE POINTED OUT THAT EVERYONE KNEW BEFORE THE MEETING BEGAN THAT THE GROUP WERE

GOING TO TRY TO GET THE SAME CONDITIONS AS PREVAILED IN THE COMPANY'S OTHER PLANT. HE TESTIFIED THAT HIS STATEMENTS WERE BASED SIMPLY UPON ASSUMPTIONS UPON HIS PART AND NOT UPON ANY COMPANY COMMITMENTS. COLLETT SAID THAT HE READ OUT TO THE EMPLOYEES THE SAME SECTIONS OF THE ACT AS HAD BEEN RECITED BY THE COMPANY, THAT IS, SECTIONS 49 TO 54, THE "RULES", WHICH THE COMPANY STATED PREVENTED BARGAINING. THE READING OF THESE SECTIONS WOULD APPEAR TO BE CORROBORATIVE OF COLLETT'S EARLIER EVIDENCE AS TO WHAT TOOK PLACE AT THE MEETING, AND WOULD HARDLY BE NECESSARY OR USEFUL IF THE MEETING HAD, IN FACT, RESULTED IN BARGAINING.

11. HAVING CONSIDERED ALL THE EVIDENCE, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT THE EVIDENCE WARRANTS THE GRANTING OF CONSENT TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR BARGAINING WITH PERSONS OTHER THAN THE APPLICANT AT A TIME WHEN THE APPLICANT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN A BARGAINING UNIT.

12. THE APPLICATION IS THEREFORE DISMISSED.

12539-66-U: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC ON BEHALF OF LOCAL 541 (APPLICANT) V. ACME DIVISION POLYGON SERVICES LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: IAN SCOTT AND J. OSBORNE FOR THE APPLICANT,  
AND P. ISBISTER, E. C. HAMLIN AND C. PARENTEAU FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:  
FEBRUARY 13, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT. THE ALLEGED OFFENCE IS THAT THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH AND FAILED TO MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

2. ON SEPTEMBER 7TH, 1966, THE APPLICANT NOTIFIED THE RESPONDENT OF ITS DESIRE TO AMEND AND MODIFY THE COLLECTIVE AGREEMENT EXISTING BETWEEN THE PARTIES. THE EXPIRY DATE OF THE AGREEMENT IS NOVEMBER 6TH, 1966.

3. THE FIRST MEETING BETWEEN THE PARTIES TOOK PLACE ON OCTOBER 25TH, 1966. AT THIS MEETING THE UNION PRESENTED ITS PROPOSALS. THE PROPOSALS SUGGESTED AMENDMENTS TO ELEVEN ARTICLES OF THE AGREEMENT IN ADDITION TO PROPOSALS ON WAGES AND A NEW CLAUSE HAVING REFERENCE TO A COST OF LIVING FORMULA. THE COMPANY STATED THAT THEY WISHED TO HAVE TIME TO STUDY THE PROPOSALS AND IT WAS AGREED TO MEET AGAIN.

4. A SECOND MEETING WAS HELD ON OCTOBER 31ST. THE COMPANY AGAIN INDICATED THAT IT WOULD LOOK INTO THE UNION PROPOSALS. IT GAVE NO INDICATION AT THIS MEETING AS TO WHETHER IT WAS REJECTING OR ACCEPTING THE PROPOSALS IN WHOLE OR IN PART. THE COMPANY MADE NO COUNTER PROPOSALS. IT APPEARS THAT AT THIS MEETING, HOWEVER, THE QUESTION WAS RAISED BY THE UNION OF NEGOTIATING AN AGREEMENT COVERING TWO OF THE COMPANY'S PLANTS.

THE COMPANY WOULD NOT AGREE TO THIS. THIS MATTER ARISES OUT OF THE FIRST OF THE UNION'S WRITTEN PROPOSALS WHICH SEEKS TO AMEND THE RECOGNITION CLAUSE TO COVER ALL EMPLOYEES OF THE COMPANY IN ONTARIO, WHEREAS THE AGREEMENT ONLY COVERS THOSE AT 50 NORTHLINE ROAD, TORONTO. THE PARTIES AGREED TO MEET AGAIN.

5. ON NOVEMBER 4TH THERE WAS A FURTHER MEETING. THE EVIDENCE OF THE APPLICANT IS THAT MR. HAMLIN TOLD THE UNION THAT HE HAD RECEIVED A VISIT FROM TWO PEOPLE IN THE PLANT AND THAT A PETITION (WHICH LATER RESULTED IN AN APPLICATION FOR TERMINATION) WAS BEING CIRCULATED SEEKING ANOTHER BARGAINING AGENT AND THAT IT DID NOT SEEM TO BE A PROPER TIME TO DEAL WITH THE UNION. THIS MEETING LASTED ABOUT TWENTY MINUTES. THE UNION STATED AT THE MEETING THAT THE MATTER SHOULD GO TO CONCILIATION, AND APPLIED FOR CONCILIATION SERVICES THAT SAME DAY.

6. A MEETING WAS HELD WITH THE CONCILIATION OFFICER ON DECEMBER 12TH, 1966, AND THIS APPLICATION WAS MADE ON DECEMBER 16TH, 1966.

7. THE PARTIES HAVE, BY AGREEMENT, MET THREE TIMES BETWEEN AND INCLUSIVE OF OCTOBER 25TH AND NOVEMBER 4TH. IT COULD HARDLY BE EXPECTED THAT ANYTHING IN THE NATURE OF BARGAINING COULD TAKE PLACE AT THE FIRST MEETING WHEN THE UNION PROPOSALS WERE FIRST SUBMITTED. AT THE SECOND MEETING THERE APPEARS TO HAVE BEEN SOME CHANGE OF VIEW POINT ON THE QUESTION OF EXTENSION OF THE RECOGNITION CLAUSE. THE NOVEMBER 4TH MEETING WAS OBVIOUSLY HAMPERED BY THE EXISTENCE OF THE PETITION WHICH AFFECTED BOTH PARTIES. THE APPLICATION OF CONCILIATION SERVICES, FILED BY THE UNION ON NOVEMBER 4TH, COULD NOT BE EXPECTED TO PROMOTE FURTHER MEETINGS PENDING THE APPOINTMENT OF THE OFFICER.

8. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT THE EVIDENCE WARRANTS THE GRANTING TO IT OF CONSENT TO PROSECUTE THE RESPONDENT FOR FAILURE TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

FEBRUARY 13, 1967.

I DISSENT. AT THE MEETING OF NOVEMBER 4TH, IT IS QUITE OBVIOUS THAT THE RESPONDENT FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT. THE RESPONDENT'S COMMUNICATION WITH EMPLOYEES WHO WERE INVOLVED IN CIRCULATING A PETITION AGAINST THE UNION AND HIS SUBSEQUENT STAND TO THE EFFECT, THAT DURING THIS PERIOD IN VIEW OF THE PETITION, THAT IT DID NOT SEEM TO BE A PROPER TIME TO DEAL WITH THE UNION, IS IN MY OPINION A CLEAR VIOLATION OF SECTION 12 OF THE ACT, I WOULD THEREFORE HAVE GRANTED THE APPLICANT CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN OFFENCE UNDER THE ACT.

12626-66-U: UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. DRESSER ELECTRIC LIMITED (RESPONDENT).



BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: T. E. ARMSTRONG AND L. CHARLICK FOR THE  
APPLICANT, N. L. MATHEWS, Q.C., R. R. EASTON, Q.C., AND H. C. DRESSER  
FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:  
FEBRUARY 23, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF  
THE RESPONDENT ON THE GROUNDS THAT ON OR ABOUT THE 2ND, 3RD, 4TH AND 7TH  
DAYS OF NOVEMBER 1966, THE RESPONDENT REFUSED TO BARGAIN IN GOOD FAITH  
AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT, IN  
CONTRAVENTION OF SECTION 12 OF THE ACT.

2. THE APPLICANT WAS CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR  
A UNIT OF EMPLOYEES OF THE RESPONDENT ON APRIL 28TH, 1966. FOLLOWING  
THE GIVING OF NOTICE OF ITS DESIRE TO BARGAIN, THE APPLICANT AND THE  
RESPONDENT HELD SEVEN NEGOTIATING SESSIONS DURING WHICH TIME AGREEMENT  
WAS REACHED ON A NUMBER OF THE ISSUES IN DISPUTE BETWEEN THEM. UPON  
MAKING APPLICATION, A CONCILIATION OFFICER WAS APPOINTED WHO HELD ONE  
MEETING WITH THE PARTIES ON AUGUST 23RD. THE PARTIES MET BY THEMSELVES  
AGAIN ON SEPTEMBER 7TH AND SUBSEQUENTLY REPORTED TO THE CONCILIATION  
OFFICER THAT THEY WERE UNABLE TO MAKE ANY FURTHER PROGRESS. BY NOTICES  
DATED SEPTEMBER 16TH, THE PARTIES WERE INFORMED THAT THE MINISTER DID  
~~NOT~~ ~~DEEM~~ IT ADVISABLE TO APPOINT A CONCILIATION BOARD. ON SEPTEMBER  
26TH, ALL OF THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT ENGAGED  
IN A STRIKE WHICH HAD THE SUPPORT OF THE APPLICANT. THE STRIKE HAVING  
COMMENCED LESS THAN FOURTEEN DAYS AFTER THE MINISTER CAUSED HIS NOTICE  
TO ISSUE, THE EMPLOYEES OF THE RESPONDENT ACTED IN CONTRAVENTION OF  
SECTION 54(2)(B) OF THE ACT. THE STRIKE IN WHICH THEY ENGAGED ACCORD-  
INGLY WAS UNLAWFUL. THE STRIKE HAS CONTINUED TO THE DATE OF THE BOARD  
HEARING AND THE APPLICANT HAS MAINTAINED A PICKET LINE AT THE RESPONDENT'S  
PREMISES DURING ALL OF THIS PERIOD.

3. BY LETTER DATED OCTOBER 6TH, LORNE CHARLICK, AN INTERNATIONAL  
REPRESENTATIVE OF THE APPLICANT, NOTIFIED HAROLD DRESSER, THE GENERAL  
MANAGER OF THE RESPONDENT, THAT THE APPLICANT WAS AVAILABLE FOR FURTHER  
NEGOTIATIONS. ROBERT EASTON, THE SOLICITOR FOR THE RESPONDENT, THERE-  
UPON TELEPHONED CHARLICK ON OR ABOUT OCTOBER 12TH AND SUGGESTED THAT  
CHARLICK REDUCE TO WRITING THE APPLICANT'S PROPOSALS ON THE REMAINING  
OUTSTANDING ISSUES SEPARATING THE PARTIES, SO AS TO PROVIDE A BASIS UPON  
WHICH TO NEGOTIATE A SETTLEMENT. CHARLICK COMPLIED WITH THIS SUGGESTION  
BY LETTER DATED OCTOBER 13TH. EASTON, IN TURN, AFTER CONSULTATION WITH  
HIS CLIENT, SET OUT THE RESPONDENT'S COUNTER-PROPOSALS BY LETTER DATED  
OCTOBER 18TH. CHARLICK, BY LETTER DATED OCTOBER 20TH, EXPRESSED THE  
BARGAINING COMMITTEE'S DISSATISFACTION WITH THE RESPONDENT'S PROPOSALS.  
EASTON ARRANGED AND HELD TWO MEETINGS WITH CHARLICK AT THE FORMER'S  
OFFICE ON OCTOBER 24TH AND 27TH. AT BOTH MEETINGS THE TWO MEN ENDEAVOURED

TO REACH AGREEMENT ON THE RESPONDENT'S PROPOSED JOB EVALUATION PROGRAM. DURING THE COURSE OF THESE NEGOTIATIONS THE RESPONDENT MADE CONCESSIONS FROM ITS PROPOSAL AS CONTAINED IN EASTON'S LETTER OF OCTOBER 18TH ON THIS ISSUE. FURTHER NEGOTIATIONS WERE CARRIED ON BY TELEPHONE BETWEEN EASTON AND CHARLICK FROM THE TIME OF THEIR SECOND MEETING ON OCTOBER 27TH TO AND INCLUDING NOVEMBER 1ST. IT APPEARS FROM THE EVIDENCE THAT ALMOST FROM THE OUTSET, THE RENEWED NEGOTIATIONS CENTRED ON THE RESPONDENT'S PROPOSED JOB EVALUATION PROGRAM. DURING THEIR TELEPHONE CONVERSATION ON NOVEMBER 1ST, HOWEVER, CHARLICK RAISED OTHER ISSUES, WHICH EASTON TESTIFIED HE BELIEVED HAD BEEN SETTLED. NEVERTHELESS, ON THAT SAME DATE, AFTER CONSULTATION WITH HIS CLIENT, EASTON INFORMED CHARLICK OF THE RESPONDENT'S FINAL POSITION ON THESE OTHER MATTERS, SOME OF WHICH DID REPRESENT FURTHER CONCESSIONS BY THE RESPONDENT.

4. IN HIS LETTER OF OCTOBER 18TH, AFTER SETTING OUT THE RESPONDENT'S PROPOSALS, EASTON SERVED NOTICE ON CHARLICK THAT IF A FINAL SETTLEMENT COULD NOT BE REACHED IN A REASONABLE PERIOD OF TIME, WHICH HE SPECIFIED, IN ALL THE CIRCUMSTANCES, AS BEING NO LATER THAN TEN DAYS, THE RESPONDENT WOULD HAVE TO ASSUME THAT A NEGOTIATED SETTLEMENT BETWEEN THE PARTIES WAS NOT POSSIBLE. BY OCTOBER 28TH, HOWEVER, THE PARTIES APPEARED TO BE ON THE VERGE OF A SETTLEMENT ON THE RESPONDENT'S MODIFIED JOB EVALUATION PROGRAM AND ON THE EVIDENCE WE FIND THAT THE DEADLINE SPECIFIED IN EASTON'S LETTER OF OCTOBER 18TH WAS EXTENDED BY THE RESPONDENT TO NOON ON NOVEMBER 2ND. WE FIND FURTHER THAT CHARLICK WAS INFORMED BY EASTON OF THE NEW DEADLINE FOR THE ACCEPTANCE OF THE RESPONDENT'S FINAL OFFER. CHARLICK, HOWEVER, DID NOT COMMUNICATE WITH EASTON AT ANY TIME DURING NOVEMBER 2ND. THE RESPONDENT THEREUPON ON THAT SAME DATE PROCEEDED TO TAKE STEPS TO RECRUIT NEW EMPLOYEES, STEPS, WE MIGHT ADD, WHICH EASTON HAD INDICATED TO CHARLICK THE RESPONDENT INTENDED TO TAKE IF NO AGREEMENT WAS REACHED BY THE DEADLINE. THE MEMBERSHIP OF THE APPLICANT DID ACCEPT THE RESPONDENT'S FINAL PROPOSALS AT A MEETING ON NOVEMBER 3RD. CHARLICK COMMUNICATED THIS INFORMATION TO A MEMBER OF THE RESPONDENT'S MANAGEMENT ON NOVEMBER 4TH. DRESSER RECEIVED NOTIFICATION OF THE ACCEPTANCE OF THE RESPONDENT'S OFFER BY LETTER FROM CHARLICK DATED NOVEMBER 8TH. EASTON, BY LETTER DATED NOVEMBER 18TH, INFORMED CHARLICK THAT THE APPLICANT HAVING FAILED TO ACCEPT THE LAST OFFER OF THE RESPONDENT BY THE FINAL DEADLINE, AND THE RESPONDENT HAVING TAKEN IRREVOCABLE STEPS TO HIRE NEW EMPLOYEES, IT WAS NO LONGER POSSIBLE FOR THE RESPONDENT TO ENTER INTO AN AGREEMENT ON THE BASIS OF ITS LAST OFFER.

5. REVIEWING THE SITUATION, THE RESPONDENT CARRIED ON EXTENSIVE NEGOTIATIONS WITH THE APPLICANT FROM MAY TO SEPTEMBER. DESPITE THE FACT THAT THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT ENGAGED IN AN UNLAWFUL STRIKE, THE RESPONDENT WILLINGLY RENEWED NEGOTIATIONS WITH THE APPLICANT. MOREOVER, IN AN EFFORT TO FACILITATE AN EARLY SETTLEMENT, THE RESPONDENT MADE CONCESSIONS DURING THE COURSE OF THESE NEGOTIATIONS. WHILE THE BOARD FINDS THAT CHARLICK WAS MADE AWARE OF THE FINAL DEADLINE ESTABLISHED BY THE RESPONDENT FOR THE ACCEPTANCE OF ITS PROPOSALS, IT MAY BE THAT CHARLICK MISINTERPRETED OR FAILED TO TAKE THE RESPONDENT'S WORD AT FACE VALUE. WHILE TAKEN BY ITSELF, THE SPECIFYING OF THE NOVEMBER 2ND DEADLINE MAY APPEAR TO HAVE BEEN AN EXTREME MEASURE ON THE PART OF THE RESPONDENT, HAVING REGARD

BOTH TO THE CIRCUMSTANCES IN WHICH THE RENEWED BARGAINING TOOK PLACE AND TO THE STAGE AT WHICH THE PARTIES HAD REACHED IN THEIR NEGOTIATIONS, THE RESPONDENT, IN OUR OPINION, WAS JUSTIFIED IN TAKING THE ACTION WHICH IT DID. MORE IMPORTANTLY, HOWEVER, FOR PURPOSES OF THIS APPLICATION, THE CONDUCT OF THE RESPONDENT ON NOVEMBER 2ND AND THEREAFTER CANNOT BE INTERPRETED AS A FAILURE ON ITS PART TO BARGAIN IN GOOD FAITH.

6. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 23, 1967.

I DISSENT.

ON THE BASIS OF ALL THE EVIDENCE I AM NOT SATISFIED THAT A FINAL DEADLINE OF NOON ON NOVEMBER 2ND, 1966 WAS ESTABLISHED BY THE RESPONDENT FOR THE ACCEPTANCE OF ITS LAST OFFER BY THE APPLICANT. EVEN IF SUCH A DEADLINE WAS, IN FACT, COMMUNICATED TO CHARLICK, THE REFUSAL OF THE RESPONDENT TO ENTER INTO A COLLECTIVE AGREEMENT AFTER THE ACCEPTANCE OF ITS OFFER BY THE APPLICANT, WHICH ACCEPTANCE WAS COMMUNICATED TO THE RESPONDENT ON NOVEMBER 4TH, IN MY OPINION, CONSTITUTE SOME EVIDENCE OF BAD FAITH BARGAINING ON THE PART OF THE RESPONDENT.

ACCORDINGLY, I WOULD GRANT LEAVE TO THE APPLICANT TO PROSECUTE THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 12 OF THE LABOUR RELATIONS ACT.

12627-66-U: UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. DRESSER ELECTRIC LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: T. E. ARMSTRONG AND L. CHARLICK FOR THE APPLICANT, N. L. MATHEWS, Q.C., R.R. EASTON, Q.C., AND H. C. DRESSER FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 23, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT ON THE GROUNDS THAT ON OR ABOUT NOVEMBER 17TH, 1966, THE RESPONDENT DID, CONTRARY TO SECTION 50(A) AND 69(1) OF THE ACT, REFUSE TO CONTINUE TO EMPLOY CERTAIN OF ITS EMPLOYEES INCLUDING PHILIP DAVIES, RICHARD MATHURIN, ROGER MATHURIN, ELWOOD CHEDAUR, ADELARD MASSE, ERNEST GINGRAS, LAURENCE RIVIT, ROBERT SEGUIN AND GERRY GAZA BECAUSE THE SAID PERSONS WERE EXERCISING THEIR RIGHT TO STRIKE UNDER THE LABOUR RELATIONS ACT.

2. THE RELEVANT EVIDENCE IS THAT FOLLOWING NEGOTIATIONS BETWEEN THE APPLICANT AND THE RESPONDENT AND SUBSEQUENT TO THE APPOINTMENT OF A CONCILIATION OFFICER WHO MET WITH THE PARTIES, BY NOTICES DATED SEPTEMBER 16TH, 1966, THE APPLICANT AND THE RESPONDENT WERE INFORMED THAT THE MINISTER

DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. ON SEPTEMBER 26TH, 1966, ALL OF THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT ENGAGED IN A STRIKE WHICH HAD THE SUPPORT OF THE APPLICANT. THE STRIKE HAS CONTINUED FROM THAT DATE AND WAS STILL IN PROGRESS AS OF THE DATE OF THE BOARD HEARING IN THIS MATTER ON FEBRUARY 2ND, 1967. ON SEPTEMBER 27TH, 1966, THE RESPONDENT CIRCULATED AMONG THE STRIKERS A NOTICE INFORMING THEM THAT ACCORDING TO SECTION 54(2)(B) OF THE LABOUR RELATIONS ACT THE STRIKE WAS ILLEGAL. THE NOTICE FURTHER INFORMED THE STRIKERS THAT THOSE WHO WERE NOT PREPARED TO RETURN TO WORK BY 12 O'CLOCK NOON ON SEPTEMBER 27TH WOULD SUBJECT THEMSELVES TO DISCIPLINARY ACTION. ON SEPTEMBER 28TH, THE RESPONDENT CIRCULATED AMONG THE STRIKERS A NOTICE INFORMING THEM OF THE PREMIUMS THAT HAD BEEN PAID FOR THEIR FRINGE BENEFITS, AND ALSO THE DATES ON WHICH THE SUCCEEDING PAYMENTS WERE DUE. THE NOTICE SUGGESTED THAT THE STRIKERS CONTACT THE FIRMS INDICATED AND ARRANGE TO MAKE THE REQUIRED PAYMENTS TO ENSURE UNINTERRUPTED COVERAGE. HAROLD DRESSER, THE GENERAL MANAGER OF THE RESPONDENT, TESTIFIED THAT ONE OF THE PLANT RULES PROVIDES THAT ANY EMPLOYEE WHO IS ABSENT FOR THREE DAYS AND FAILS TO REPORT HIS ABSENCE TO THE RESPONDENT IS DEEMED TO HAVE VOLUNTARILY TERMINATED HIS EMPLOYMENT WITH THE RESPONDENT.

3. BY LETTER DATED NOVEMBER 17TH, 1966, EACH OF THE STRIKERS WERE REQUESTED BY THE RESPONDENT TO PICK UP THEIR UNEMPLOYMENT INSURANCE BOOKS AND VACATION PAY BASED ON THEIR EARNINGS SINCE THEIR PREVIOUS VACATION PAY PERIOD. BY LETTER DATED NOVEMBER 23RD, 1966, EACH OF THE STRIKERS WERE ADVISED THAT SINCE THEY HAD NOT PICKED UP THEIR UNEMPLOYMENT INSURANCE BOOK AS REQUESTED IN THE RESPONDENT'S LETTER OF NOVEMBER 17TH, AND BECAUSE THE RESPONDENT HAD NO REASON TO RETAIN THE BOOKS, THE BOOKS WERE BEING FORWARDED TO THE LOCAL COMMISSION OFFICE. THE STRIKERS WERE FURTHER ADVISED IN THE LETTER THAT THE RESPONDENT WAS HOLDING THE VACATION PAY IN ITS OFFICE, AWAITING PICK-UP OR WRITTEN INSTRUCTIONS FROM THE STRIKERS. THE LETTER EXPRESSED THE VIEW THAT THE STRIKERS HAD VOLUNTARILY LEFT THE RESPONDENT'S EMPLOY THE DAY THE STRIKE COMMENCED, BECAUSE THEIR STRIKE ACTION WAS ILLEGAL. BY THE SAME LETTER, THE RESPONDENT INFORMED THE STRIKERS THAT IF THEY WISHED RE-EMPLOYMENT, THEIR APPLICATIONS WOULD BE CONSIDERED, OR IF A PERSONAL REFERENCE WAS REQUIRED FOR THEIR NEXT JOB, THE RESPONDENT WOULD, UPON REQUEST, GIVE A RECOMMENDATION BASED ON THE WORK THEY DID WHILE IN THE RESPONDENT'S EMPLOY.

4. ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS OF THE OPINION THAT AN ARGUABLE QUESTION OF LAW ARISES IN THIS MATTER.

5. THE BOARD ACCORDINGLY CONSENTS TO THE INSTITUTION OF A PROSECUTION OF THE RESPONDENT, DRESSER ELECTRIC LIMITED, FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT ON OR ABOUT NOVEMBER 17TH, 1966, THE  
RESPONDENT, IN CONTRAVENTION OF SECTION 50(A)  
AND 69(1) OF THE LABOUR RELATIONS ACT,  
REFUSED TO CONTINUE TO EMPLOY THOSE OF ITS



EMPLOYEES WHO ARE MEMBERS OF THE BARGAINING  
UNIT REPRESENTED BY THE APPLICANT BECAUSE  
THEY WERE EXERCISING THEIR RIGHT TO STRIKE  
UNDER THE ACT.

6. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER H. F. IRWIN: FEBRUARY 23, 1967.

I DISSENT.

WHILE I APPRECIATE THE FACT THAT THERE MAY BE ARGUABLE QUESTIONS  
OF LAW IN THIS MATTER, IN ALL THE CIRCUMSTANCES OF THIS CASE I WOULD  
EXERCISE THE BOARD'S DISCRETION AND REFUSE CONSENT TO PROSECUTE,  
REGARDLESS OF WHICH WAY THE QUESTIONS OF LAW WERE DECIDED.

THE WRITTEN NOTICE GIVEN TO THE SHOP COMMITTEE ON SEPTEMBER 26TH,  
THE DAY THE UNLAWFUL STRIKE COMMENCED, READS AS FOLLOWS:

NOTICE TO SHOP COMMITTEE

ACCORDING TO SECTION 54, AS AMENDED IN 1966,  
ARTICLE 2(B) OF THE LABOUR RELATIONS ACT OF  
ONTARIO, THIS STRIKE IS ILLEGAL.

EMPLOYEES NOT PREPARED TO RETURN TO WORK BY  
12 O'CLOCK NOON TODAY, WILL SUBJECT THEMSELVES  
TO DISCIPLINARY ACTION.

H. C. DRESSER  
GENERAL MANAGER

"H. C. DRESSER"  
DRESSER ELECTRIC LIMITED

THE WRITTEN NOTICE REGARDING THE EMPLOYEES' HOSPITAL, MEDICAL AND  
LIFE INSURANCE, DATED SEPTEMBER 28, 1966, READS AS FOLLOWS:

DRESSER ELECTRIC LTD.  
877 WALKER RD.  
WINDSOR, ONTARIO

THIS NOTICE WILL SERVE TO INFORM YOU THAT PREMIUMS  
FOR THE FOLLOWING FRINGE BENEFITS HAVE BEEN PAID  
TO AND ARE DUE ON THE DATES INDICATED.

ONTARIO HOSPITAL	) PAID TO DEC. 1/66
INSURANCE & BLUE	) PREMIUM FOR DEC. DUE ON
CROSS SUPPLEMENTARY	) SEPTEMBER 30/66
WINDSOR MEDICAL	) PAID TO SEPT. 30/66
	) OCTOBER PREMIUM DUE ON
	) OCT. 1/66

GROUP INSURANCE  
(LONDON LIFE INS.CO.)

)PAID TO SEPT. 30/66  
)OCTOBER PREMIUM DUE ON  
)OCTOBER 1/66

TO ENSURE UNINTERRUPTED COVERAGE IT IS SUGGESTED  
THAT YOU CONTACT THE ABOVE FIRMS IMMEDIATELY,  
AND ARRANGE TO MAKE THE REQUIRED PAYMENTS AND  
COMPLETE ANY NECESSARY FORMS.

D. E. HILLS

"D. HILLS"  
DRESSER ELECTRIC LIMITED

SEPTEMBER 28, 1966

THE EVIDENCE IS THAT THE COMPANY HAS AN ESTABLISHED PLANT RULE WHICH STATES THAT EMPLOYEES WHO ABSENT THEMSELVES ON THREE CONSECUTIVE DAYS WITHOUT COMMUNICATING WITH THE COMPANY ARE DEEMED TO HAVE TERMINATED THEIR EMPLOYMENT. THE EMPLOYEES HEREIN CONCERNED, THEREFORE, BROUGHT ABOUT THEIR OWN TERMINATION OF EMPLOYMENT WITH THE RESPONDENT UNDER THIS RULE BY VOLUNTARILY ABSENTING THEMSELVES FROM WORK ON SEPTEMBER 26TH, 27TH AND 28TH, 1966 DURING WHICH TIME THEY ENGAGED IN AN UNLAWFUL STRIKE, CONTRARY TO SECTION 54(2)(B) OF THE LABOUR RELATIONS ACT. NO FURTHER OR SPECIFIC ACTION WAS REQUIRED BY THE COMPANY AS THE TERMINATION OF EMPLOYMENT WAS AUTOMATICALLY EFFECTIVE AT THE END OF THEIR THREE CONSECUTIVE DAYS OF ABSENCE.

THE OFFENCE COMPLAINED OF BY THE APPLICANT WAS ALLEGED TO HAVE TAKEN PLACE ON NOVEMBER 17TH WHEN THE RESPONDENT WROTE A LETTER TO THE FORMER EMPLOYEES REQUESTING THEM TO CALL AT THE OFFICE AT THE NEXT OPPORTUNITY TO PICK UP THEIR UNEMPLOYMENT INSURANCE BOOKS AND VACATION PAY DUE THEM. THE COMPANY WANTED TO DIVEST ITSELF OF THE UNEMPLOYMENT INSURANCE BOOKS AND VACATION PAY DUE TO THESE PERSONS WHO HAD VOLUNTARILY TERMINATED THEIR EMPLOYMENT ON SEPTEMBER 28TH, 1966.

ALTHOUGH THE ALLEGED OFFENCE TOOK PLACE ON NOVEMBER 17TH, 1966, THE APPLICANT DID NOT MAKE APPLICATION TO THIS BOARD FOR LEAVE TO PROSECUTE THE RESPONDENT UNTIL JANUARY 17TH, 1967, OR TWO MONTHS AFTER THE ALLEGED OFFENCE. FURTHERMORE, MR. DRESSER AT THE HEARING IN THIS MATTER ON FEBRUARY 2ND TESTIFIED UNDER OATH THAT HE WAS PREPARED TO REHIRE THESE PERSONS AS SOON AS WORK WAS AVAILABLE IF THEY APPLIED FOR EMPLOYMENT WITH THE RESPONDENT. IT IS RELEVANT ALSO TO MENTION THAT THE APPLICANT SUPPORTED THE UNLAWFUL STRIKE WHICH WAS ENGAGED IN BY THE EMPLOYEES OF THE RESPONDENT AND MADE NO EFFORT TO PERSUADE THE EMPLOYEES TO RETURN TO WORK FORTHWITH.

IN ALL THE CIRCUMSTANCES, I CAN ONLY VIEW THIS APPLICATION AS BEING VEXATIOUS AND RETALIATORY AND I WOULD HAVE EXERCISED THE BOARD'S DISCRETION AND REFUSED LEAVE TO PROSECUTE.

INDEXED ENDORSEMENT - FINANCIAL STATEMENT

12604-66-M: WILLIAM BALL (COMPLAINANT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS - LOCAL 796 (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: WILLIAM BALL FOR THE COMPLAINANT,  
J. PARKER FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 14, 1967.

1. THE COMPLAINANT COMPLAINS THAT THE RESPONDENT HAS FAILED UPON HIS REQUEST TO FURNISH HIM WITH A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR CERTIFIED TO BE A TRUE COPY BY ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS IN CONTRAVENTION OF SECTION 63 OF THE LABOUR RELATIONS ACT.

2. BY THE DATE OF THE HEARING IN THIS MATTER, FEBRUARY 8TH, 1967, THE COMPLAINANT ADMITTED THAT HE HAD RECEIVED A COPY OF A STATEMENT OF ASSETS AND LIABILITIES OF THE RESPONDENT AS OF JUNE 30TH, 1966, WHICH THE RESPONDENT INFORMED THE BOARD WAS ITS MOST RECENT FINANCIAL STATEMENT. THE COMPLAINANT SUBMITS THAT THE STATEMENT DOES NOT COMPLY WITH THE PROVISIONS OF SECTION 63, IN THAT IT IS NOT CERTIFIED BY ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS TO BE A TRUE COPY.

3. THE FINANCIAL STATEMENT CONTAINS AN EXPRESSION OF OPINION BY A CHARTERED ACCOUNTANT, BASED ON THE FINANCIAL RECORDS OF THE RESPONDENT AND TESTS MADE BY HIM, THAT THE STATEMENT FAIRLY PRESENTS THE FINANCIAL POSITION OF THE RESPONDENT AS OF THE DATE INDICATED. THE FINANCIAL STATEMENT IS ALSO CERTIFIED BY TWO AUDITORS, WHO ARE MEMBERS OF THE RESPONDENT, THAT THE STATEMENT IS A TRUE COPY OF THE REPORT PRESENTED TO THEM BY THE CHARTERED ACCOUNTANT.

4. WE NOTE BY ARTICLE XIII, SUBDIVISION 1, SECTION (A) OF THE RESPONDENT'S CONSTITUTION THAT THE AUDITORS ARE NOT OFFICERS OF THE RESPONDENT. THEREFORE, WE FIND THAT THE RESPONDENT HAS NOT COMPLIED WITH THE PROVISIONS OF SECTION 63 OF THE ACT.

5. THE BOARD ACCORDINGLY DIRECTS THAT THE RESPONDENT FILE WITH THE REGISTRAR, NOT LATER THAN FEBRUARY 27TH, 1967, A COPY OF ITS FINANCIAL STATEMENT VERIFIED BY THE AFFIDAVIT OF ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS AFFAIRS. THE BOARD FURTHER DIRECTS THAT THE RESPONDENT FURNISH TO THE COMPLAINANT, BY THE SAME DATE, A COPY OF THE FINANCIAL STATEMENT TOGETHER WITH A COPY OF THE AFFIDAVIT REQUIRED TO BE FILED WITH THE BOARD ATTACHED HERETO.

INDEXED ENDORSEMENT - SECTION 47(A)

12540-66-M: UNITED DAIRY & BAKERY WORKERS' UNION, LOCAL 422 OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. MOUNTAIN VIEW DAIRY LTD.; OAKVILLE DAIRY CO-OPERATIVE LIMITED; MILK AND BREAD DRIVERS DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENTS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND P. J. O'KEEFE.

APPEARANCES AT HEARING: H. BUCHANAN FOR THE APPLICANT, DONALD E. HOUCK, F. A. ROBERTSON AND J. NEWMAN FOR MOUNTAIN VIEW DAIRY LTD. AND OAKVILLE DAIRY CO-OPERATIVE LIMITED, AND T. E. ARMSTRONG, S. POWERS AND W. SACKFIELD FOR MILK AND BREAD DRIVERS DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER  
R. W. TEAGLE: FEBRUARY 13, 1967.

...

2. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT. THE APPLICANT, UNITED DAIRY & BAKERY WORKERS' UNION, LOCAL 422 OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC, REFERRED HEREFTER AS RETAIL, WHOLESALE, WAS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF MOUNTAIN VIEW DAIRY LTD., HEREIN REFERRED TO AS MOUNTAIN VIEW, AT DUNDAS. THE RESPONDENT, MILK AND BREAD DRIVERS DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, REFERRED TO HEREIN AS TEAMSTERS, WAS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF OAKVILLE DAIRY CO-OPERATIVE LIMITED, REFERRED TO HEREIN AS OAKVILLE DAIRY, IN THE "OAKVILLE AREA", WHICH, IT WAS AGREED BY ALL PARTIES, INCLUDED EMPLOYEES AT OAKVILLE AND WATERDOWN. ON OR ABOUT NOVEMBER 23RD, 1966, OAKVILLE DAIRY PURCHASED THE BUSINESS OF MOUNTAIN VIEW AS WELL AS THE BUSINESS OF ANOTHER COMPANY, VALLEY CITY DAIRY LIMITED. IT IS NOT DISPUTED THAT THESE TRANSACTIONS CONSTITUTED, IN EACH CASE, THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT.

3. FOLLOWING THE PURCHASES OF THE BUSINESSES ABOVE REFERRED TO, OAKVILLE DAIRY MOVED THOSE BUSINESSES AND CARRIED THEM ON FROM ITS DEPOT AT WATERDOWN IN CONJUNCTION WITH ITS OWN OPERATIONS. IT EMPLOYED SUBSTANTIALLY ALL OF THE FORMER EMPLOYEES OF MOUNTAIN VIEW (SOME EIGHT PERSONS), AND OF VALLEY CITY (SOME SEVEN PERSONS) AS WELL AS SOME NINE PERSONS WHO HAD BEEN ITS OWN EMPLOYEES AT WATERDOWN. HAVING REGARD TO THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN TEAMSTERS AND OAKVILLE DAIRY, IT IS CLEAR THAT, WERE IT NOT FOR THE DOUBT CREATED BY THE CLAIM NOW MADE BY RETAIL WHOLESALE, ALL OF THOSE EMPLOYEES WOULD BE COVERED BY THE COLLECTIVE AGREEMENT. RETAIL WHOLESALE DOES NOT CLAIM TO REPRESENT ALL OF THE EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY TEAMSTERS, BUT IT DOES CLAIM CONTINUING BARGAINING RIGHTS WITH RESPECT TO EMPLOYEES OF OAKVILLE



DAIRY AT WATERDOWN. IT IS URGED ON BEHALF OF RETAIL WHOLESALE THAT THE QUESTION OF BARGAINING RIGHTS FOR EMPLOYEES AT WATERDOWN SHOULD BE RESOLVED BY MEANS OF A REPRESENTATION VOTE.

4. IT MUST BE NOTED, ALTHOUGH NO ARGUMENT WAS MADE ON THIS POINT, THAT THE BARGAINING RIGHTS HELD BY RETAIL WHOLESALE WERE FOR EMPLOYEES OF MOUNTAIN VIEW AT DUNDAS (A FACT WHICH WAS DRAWN TO THE ATTENTION OF THE PARTIES AT THE HEARING), WHEREAS THE OPERATIONS, WITH RESPECT TO WHICH IT CLAIMS TO REPRESENT EMPLOYEES, HAVE BEEN MOVED TO WATERDOWN. HAD THERE BEEN NO SALE, BUT HAD MOUNTAINVIEW SIMPLY MOVED THE BASE OF ITS OWN OPERATIONS FROM DUNDAS TO WATERDOWN, IT WOULD SEEM THAT THE BARGAINING RIGHTS OF RETAIL WHOLESALE WOULD NOT CONTINUE, EXCEPT BY THE AGREEMENT OF THE PARTIES. RETAIL WHOLESALE COULD NOT BE IN A BETTER POSITION IN THIS CASE, WHERE OAKVILLE DAIRY, HAVING PURCHASED THE BUSINESS OF MOUNTAIN VIEW, MOVED ITS OPERATIONS TO WATERDOWN. THE BOARD DOES NOT, HOWEVER DISPOSE OF THE APPLICATION ON THIS GROUND.

5. IT MUST ALSO BE NOTED THAT SECTION 47A PROVIDES FOR THE CONTINUATION OF THE BARGAINING RIGHTS OF A TRADE UNION WHICH REPRESENTED EMPLOYEES OF AN EMPLOYER WHOSE BUSINESS HAS BEEN SOLD. IT HAS NO APPLICATION IN THE CASE OF THE SALE OF A BUSINESS WHOSE EMPLOYEES HAVE NOT BEEN REPRESENTED BY A TRADE UNION. THUS, IN THE INSTANT CASE, THOSE FORMER EMPLOYEES OF VALLEY CITY NOW EMPLOYED BY OAKVILLE DAIRY AT WATERDOWN, COME WITHIN THE BARGAINING UNIT AND ARE REPRESENTED BY TEAMSTERS. THIS IS NOT TO SAY, OF COURSE, THAT THE BOARD MIGHT NOT CONSIDER THE HISTORY OF THIS GROUP OF EMPLOYEES IN DETERMINING WHETHER, ON AN APPLICATION SUCH AS THIS, TO ORDER A REPRESENTATION VOTE. THE BOARD HAS BROAD POWERS IN THIS REGARD UNDER SECTION 47A(7).

6. SUBSECTIONS (2) AND (3) OF SECTION 47A ARE AS FOLLOWS:-

- (2) WHERE AN EMPLOYER WHO IS BOUND OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40 SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11.
- (3) WHERE A BUSINESS WAS SOLD TO A PERSON AND A TRADE UNION WAS THE BARGAINING AGENT OF ANY OF THE EMPLOYEES IN SUCH BUSINESS OR A TRADE UNION IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY BUSINESS CARRIED ON BY THE PERSON TO WHOM THE BUSINESS WAS SOLD, AND,

- (A) ANY QUESTION ARISES AS TO WHAT CONSTITUTES THE LIKE BARGAINING UNIT REFERRED TO IN SUBSECTION 2: OR
- (B) ANY PERSON OR TRADE UNION CLAIMS THAT, BY VIRTUE OF THE OPERATION OF SUBSECTION 2, A CONFLICT EXISTS BETWEEN THE BARGAINING RIGHTS OF THE TRADE UNION THAT REPRESENTED THE EMPLOYEES OF THE PREDECESSOR EMPLOYER AND THE TRADE UNION THAT REPRESENTS THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD,

THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED,

- (C) DEFINE THE COMPOSITION OF THE LIKE BARGAINING UNIT REFERRED TO IN SUBSECTION 2 WITH SUCH MODIFICATION, IF ANY, AS THE BOARD DEEMS NECESSARY; AND
- (D) AMEND, TO SUCH EXTENT AS ~~THE BOARD DEEMS~~ NECESSARY, ANY BARGAINING UNIT IN ANY CERTIFICATE ISSUED TO ANY OTHER UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT.

REFERENCE MUST ALSO BE MADE TO SUBSECTION (5) OF SECTION 47A:-

- (5) WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED,

- (A) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;
- (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
- (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT.

7. IN THE INSTANT CASE, THE BARGAINING UNITS REPRESENTED BY TEAMSTERS AND RETAIL WHOLESALE WERE SIMILAR IN THAT THEY WERE ESSENTIALLY "ALL EMPLOYEE" UNITS, EXCEPTING OFFICE STAFF. THE BARGAINING UNIT REPRESENTED BY RETAIL WHOLESALE EXCLUDED ROUTE SUPERVISORS, WHICH MIGHT NOT BE A PROPER EXCLUSION FROM ANY NEW BARGAINING UNIT. THE PECULIAR DIFFERENCE OF THE INSTANT CASE IS THAT THE BARGAINING RIGHTS CLAIMED BY RETAIL WHOLESALE WOULD EXIST WITH RESPECT TO A PARTICULAR PORTION OF THE EXISTING BARGAINING UNIT NOW REPRESENTED BY TEAMSTERS, THAT IS, THE WATERDOWN PORTION OF THE BARGAINING UNIT. IN THE OSHAWA WHOLESALE LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1965, P. 584, THE BOARD STATED AS FOLLOWS:-

WE WOULD POINT OUT THAT DIFFERENT CONSIDERATIONS ARE TAKEN INTO ACCOUNT BY THE BOARD IN DETERMINING BARGAINING UNITS IN APPLICATIONS MADE UNDER SECTION 47A OF THE LABOUR RELATIONS ACT AND IN APPLICATIONS FOR CERTIFICATION. FOR EXAMPLE, IN AN APPLICATION FOR CERTIFICATION FOR THE EMPLOYEES OF RETAIL FOOD STORES, IT IS THE PRACTICE OF THE BOARD TO INCLUDE THE EMPLOYEES IN ALL OF THE STORES OF THE PARTICULAR OWNER IN A MUNICIPALITY IN THE BARGAINING UNIT. IN THE INSTANT CASE, IF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206 HAD NOT ALREADY ACQUIRED BARGAINING RIGHTS FOR SOME OF THE EMPLOYEES OF OSHAWA WHOLESALE, THE BOARD WOULD HAVE NO DIFFICULTY IN FINDING THAT THE APPROPRIATE BARGAINING UNIT WOULD INCLUDE ALL OF THE STORES OF OSHAWA WHOLESALE IN METROPOLITAN TORONTO. THE PRACTICES OF THE BOARD IN CERTIFICATION APPLICATIONS WITH RESPECT TO THE APPROPRIATENESS OF BARGAINING UNITS, HOWEVER, MAY BE CIRCUMSCRIBED IN AN APPLICATION UNDER SECTION 47A, SINCE THE SECTION PROVIDES, EXCEPT IN SPECIAL CIRCUMSTANCES, THAT A TRADE UNION CONTINUES TO HOLD ITS BARGAINING RIGHTS IN THE LIKE BARGAINING UNIT. IN OTHER WORDS, IN APPLYING SECTION 47A, THE BOARD MUST CONSIDER NOT ONLY WHAT WOULD BE AN APPROPRIATE BARGAINING UNIT IN A CERTIFICATION PROCEEDING, BUT ALSO IT MUST TAKE INTO ACCOUNT, AND IN LARGE MEASURE BE GOVERNED BY, THE SCOPE OF THE BARGAINING UNIT ALREADY IN EXISTENCE.

THE REFERENCE TO THE "BARGAINING UNIT ALREADY IN EXISTENCE" WAS TO THE BARGAINING UNIT REPRESENTED BY THE APPLICANT AMONG EMPLOYEES OF THE PREDECESSOR EMPLOYER, WHOSE BUSINESS HAD BEEN PURCHASED BY A SUCCESSOR EMPLOYER. THE SUCCESSOR EMPLOYER INCORPORATED THE BUSINESS OF THE PREDECESSOR INTO ITS OWN LARGER BUSINESS. THE BOARD, IN THE RESULT, PRESERVED THE BARGAINING RIGHTS OF THE APPLICANT WITH RESPECT TO EMPLOYEES IN SPECIFIC STORES, WHICH HAD FORMERLY BEEN OPERATED BY THE PREDECESSOR EMPLOYER. TWO POINTS OF DISTINCTION FROM THE INSTANT CASE MUST BE OBSERVED. FIRST, THERE WAS IN THE OSHAWA WHOLESALE CASE NO EXISTING BARGAINING UNIT OF EMPLOYEES OF THE SUCCESSOR EMPLOYER. IN THE INSTANT CASE THERE IS SUCH A UNIT IN EXISTENCE. SECOND, AND MORE IMPORTANT, THE BOARD IN THE OSHAWA WHOLESALE CASE HELD THAT THE AMOUNT OF INTERMINGLING OF EMPLOYEES BETWEEN THE STORES OF THE PREDECESSOR AND SUCCESSOR EMPLOYERS WAS SO SLIGHT THAT THE BOARD WOULD NOT EXERCISE ITS DISCRETION UNDER

SUBSECTION (5) OF SECTION 47A TO ALTER OR AMEND EXISTING BARGAINING RIGHTS. IN THE INSTANT CASE, THE EVIDENCE ESTABLISHES THAT THERE HAS BEEN SOME INTERMINGLING OF EMPLOYEES OF THE SUCCESSOR AND PREDECESSOR EMPLOYERS. THIS DETERMINATION, OF COURSE, MUST BE MADE HAVING REGARD TO THE NATURE OF THE OPERATIONS CONCERNED. IT IS NOT SUGGESTED THAT THERE SHOULD BE MORE THAN ONE UNIT OF EMPLOYEES AT WATERDOWN; IT IS SUGGESTED BY THE APPLICANT THAT A UNIT CONSISTING OF EMPLOYEES AT WATERDOWN SHOULD BE SEPARATED FROM THE EXISTING UNIT CONSISTING OF EMPLOYEES AT OAKVILLE AND WATERDOWN.

8. IN THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR CASE, O.L.R.B. MONTHLY REPORT, MARCH 1966, P. 920, THE BOARD DEALT WITH A CASE WHERE ONE MUNICIPALITY WAS ANNEXED TO ANOTHER. EMPLOYEES OF THE PREDECESSOR AND SUCCESSOR EMPLOYERS WERE REPRESENTED BY DIFFERENT TRADE UNIONS. THE FORMER EMPLOYEES OF THE PREDECESSOR EMPLOYER CAME WITHIN THE LITERAL DEFINITION OF THE BARGAINING UNIT OF THE EMPLOYEES OF THE SUCCESSOR, WHOSE GEOGRAPHICAL AREA HAD EXPANDED BY REASON OF THE ANNEXATION IN THAT CASE. HOWEVER, THERE HAD BEEN NO INTERMINGLING OF EMPLOYEES, AND THE BARGAINING UNITS COULD, IN EACH CASE, BE DESCRIBED WITH PRECISION BY REFERENCE TO GEOGRAPHIC LOCATION. THE BOARD PRESERVED THE BARGAINING RIGHTS OF THE TRADE UNION, WHICH HAD REPRESENTED EMPLOYEES OF THE PREDECESSOR EMPLOYER BY DEFINING A "LIKE UNIT" OF EMPLOYEES WITHIN THE FORMER MUNICIPAL BOUNDRIES OF THE PREDECESSOR EMPLOYER.

9. THE QUESTION WHICH ARISES IN THE INSTANT CASE IS SOMEWHAT DIFFERENT; IT IS IN ESSENCE WHETHER THE BOARD SHOULD DIVIDE THE BARGAINING UNIT NOW REPRESENTED BY TEAMSTERS INTO TWO UNITS, ONE OF EMPLOYEES AT OAKVILLE AND THE OTHER OF EMPLOYEES AT WATERDOWN. IF THIS WERE DONE, THE BOARD, HAVING REGARD TO THE NUMBER OF PERSONS REPRESENTED BY THE TRADE UNIONS AND THE NUMBER OF PERSONS WHO HAD NOT BEEN REPRESENTED BY A BARGAINING UNIT, WOULD DIRECT A REPRESENTATION VOTE OF THE EMPLOYEES OF THE BARGAINING UNIT AT WATERDOWN. ON THE OTHER HAND, IF THE BARGAINING UNIT, CONSISTING OF EMPLOYEES AT OAKVILLE AND WATERDOWN, IS PRESERVED, THE BOARD WOULD NOT DIRECT SUCH A VOTE, THE APPLICANT HAVING REPRESENTED ONLY EIGHT OF THE APPROXIMATELY SIXTY PERSONS NOW IN THAT BARGAINING UNIT. EVEN IF THE FORMER EMPLOYEES OF VALLEY CITY BE EXCEPTED (AND AS TO THIS, SEE PARAGRAPH 5, SUPRA), IT REMAINS THE CASE THAT TEAMSTERS REPRESENT SEVENTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT.

10. ON AN APPLICATION FOR CERTIFICATION, THE BOARD WOULD NOT, SPEAKING GENERALLY, AND IN THE ABSENCE OF AGREEMENT OF THE PARTIES, OR OF PERSUASIVE EVIDENCE, DETERMINE A BARGAINING UNIT OF EMPLOYEES IN MORE THAN ONE GEOGRAPHIC AREA TO BE APPROPRIATE. AS WAS STATED IN THE OSHAWA WHOLE-SALE CASE, SUPRA, HOWEVER, THE BARGAINING UNIT - AND IN THIS CASE, THE BARGAINING UNITS - ALREADY IN EXISTENCE MUST BE CONSIDERED. EVIDENCE WAS HEARD RELATING TO THE QUESTION OF INTERCHANGE OF EMPLOYEES AS BETWEEN OAKVILLE AND WATERDOWN, AND AS TO THE FUNCTIONAL RELATIONSHIPS BETWEEN THE EMPLOYEES' OPERATIONS AT THESE LOCATIONS. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, IT IS OUR CONCLUSION THAT THE EXISTING BARGAINING UNIT SHOULD BE PRESERVED. THIS IS NOT TO SAY, HOWEVER, THAT ON AN INITIAL APPLICATION FOR CERTIFICATION A UNIT CONSISTING OF EMPLOYEES OF THE RESPONDENT AT WATERDOWN MIGHT NOT HAVE BEEN DEEMED APPROPRIATE FOR COLLECTIVE BARGAINING.



11. PURSUANT TO SECTION 47A (5), IT IS OUR DETERMINATION THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION CONSTITUTED ONE PROPER BARGAINING UNIT, BEING THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT OAKVILLE DAIRY AND THE RESPONDENT TEAMSTERS. THE BOARD DECLARES THAT THE MILK AND BREAD DRIVERS DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA IS THE BARGAINING AGENT FOR THE EMPLOYEES OF OAKVILLE DAIRY CO-OPERATIVE LIMITED IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

FEBRUARY 13, 1967.

I DISSENT.

THE BOARD IS RELUCTANT TO DIVIDE AN ESTABLISHED BARGAINING UNIT THAT EMBRACES EMPLOYEES IN OAKVILLE AND WATERDOWN. WHILE I WOULD AGREE THAT IT IS LOGICAL TO MAINTAIN THIS KIND OF BARGAINING UNIT WHICH HAS BEEN ARRIVED AT THROUGH THE NORMAL COURSE OF BARGAINING, NEVERTHELESS, I SUBMIT THAT GOING ALONG WITH THIS LOGIC SHOULD NOT BE USED BY THE BOARD TO DEPRIVE THE APPLICANT OF A REPRESENTATION VOTE. CLEARLY, IF THE BOARD FOUND THAT THE RESPONDENT COMPANY'S OPERATION IN WATERDOWN CONSTITUTED ONE BARGAINING UNIT THEN THERE WOULD BE NO DOUBT THAT THE APPLICANT, WHO REPRESENTS A THIRD OF THE EMPLOYEES INVOLVED, WOULD BE ENTITLED TO A REPRESENTATION VOTE. IN LINE WITH THE BOARD'S NORMAL PRACTICE IN CERTIFICATION OF LIKE UNITS, THE BOARD GENERALLY CERTIFIES A UNION FOR A STRICT MUNICIPAL GEOGRAPHICAL AREA. THE PRIME CONSIDERATION IN THIS MATTER IS RECOGNIZING A BARGAINING UNIT DESCRIPTION THAT HAD BEEN ARRIVED AT BETWEEN THE RESPONDENTS IN BARGAINING. RECOGNIZING THIS SITUATION AND GOING ALONG WITH IT IS ONE THING, THEN TO USE THIS SITUATION TO DEPRIVE THE APPLICANT OF A REPRESENTATION VOTE BECAUSE OF THIS RECOGNITION IS ENTIRELY A DIFFERENT MATTER. I WOULD HAVE ORDERED A REPRESENTATION VOTE.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12438-66-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JOSEPH'S HOSPITAL (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: FEBRUARY 17, 1967.

1. ON DECEMBER 2ND, 1966, A CERTIFICATE WAS ISSUED TO THE APPLICANT, THE CANADIAN UNION OF PUBLIC EMPLOYEES, WITH RESPECT TO A BARGAINING UNIT DESCRIBED AS FOLLOWS:-

ALL LAY EMPLOYEES OF THE RESPONDENT AT GUELPH,  
SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF,  
GRADUATE NURSING STAFF, UNDERGRADUATE NURSES,

GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS.

2. ON FEBRUARY 6TH, 1967, THE BOARD RECEIVED THE FOLLOWING COMMUNICATION, SIGNED BY TWO PERSONS DESCRIBED AS "R.N.A. REPRESENTATIVES":-

ONTARIO LABOUR RELATIONS BOARD,  
8 YORK STREET,  
TORONTO, ONTARIO.

DEAR SIRs:

WE, THE REGISTERED NURSING ASSISTANTS OF ST. JOSEPH'S HOSPITAL AND CHRONIC DIVISION, HAVE BEEN INFORMED THAT WE ARE LISTED WITH THE "CANADIAN UNION OF PUBLIC EMPLOYEES".

WE HAD NOT BEEN NOTIFIED PERSONALLY BY MAIL, PHONE OR PERSONAL CONTACT, BY A REPRESENTATIVE OF THE UNION IN THE HOSPITAL AS TO THE FORMATION OF A UNION. WE HAVE BEEN TOLD THAT A NOTICE WAS BULLETED ON A BULLETIN BOARD IN THE HOSPITAL AND CHRONIC WING.

WE, AS A GROUP, 100% OF REGISTERED NURSING ASSISTANTS OF ST. JOSEPH'S HOSPITAL AND CHRONIC DIVISION, GUELPH, ONTARIO, DO NOT WISH TO BELONG TO A UNION OF NON PROFESSIONAL STANDING. WE ARE REGISTERED WITH THE COLLEGE OF NURSES AND PAY OUR DUES TO THE COLLEGE.

THEREFORE, WE SUBMIT THE FOLLOWING LIST OF NAMES, COLLECTED OFF THE PREMISES, ENTIRELY ON OUR OWN INITIATIVE, TO BE EXCLUDED FROM THE UNION CONTRACT.

SINCERELY,  
(SIGNATURES).

THERE WAS ATTACHED TO THE ABOVE LETTER A LIST CONTAINING THE SIGNATURES AND ADDRESSES OF REGISTERED NURSING ASSISTANTS WHO DID NOT WISH TO BELONG TO THE TRADE UNION.

3. THIS COMMUNICATION MAY BE READ AS AN OBJECTION TO THE APPLICATION BY THE CANADIAN UNION OF PUBLIC EMPLOYEES FOR CERTIFICATION FOR THE BAR-GAINING UNIT DESCRIBED ABOVE, AS A REQUEST FOR REVIEW OF THE BOARD'S

DECISION, OR AS A REQUEST TO THE BOARD FOR THE SPECIAL RELIEF SUGGESTED IN THE LAST PARAGRAPH OF THE LETTER. IF THE LETTER IS REGARDED AS INDICATING OBJECTION TO THE APPLICATION, IT IS CLEAR THAT SUCH OBJECTION IS UNTIMELY. FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, WAS POSTED AT THE PREMISES OF THE EMPLOYER IN CONNECTION WITH THIS APPLICATION. PARAGRAPHS 5 TO 8 OF THAT NOTICE WERE AS FOLLOWS:-

5. ANY EMPLOYEE OR GROUP OF EMPLOYEES AFFECTED BY THE APPLICATION AND DESIRING TO MAKE REPRESENTATIONS TO THE BOARD IN OPPOSITION TO THIS APPLICATION MUST SEND TO THE BOARD A STATEMENT IN WRITING OF SUCH DESIRE, WHICH SHALL,

- (A) CONTAIN THE RETURN MAILING ADDRESS OF THE EMPLOYEE OR REPRESENTATIVE OF A GROUP OF EMPLOYEES;
- (B) CONTAIN THE NAME OF THE EMPLOYER CONCERNED; AND
- (C) BE SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES.

6. THE STATEMENT OF DESIRE MUST BE,

- (A) RECEIVED BY THE BOARD NOT LATER THAN THE TERMINAL DATE SHOWN IN PARAGRAPH 4; OR
- (B) IF IT IS MAILED BY REGISTERED MAIL ADDRESSED TO THE BOARD AT ITS OFFICE, 8 YORK STREET, TORONTO 1, ONTARIO, MAILED NOT LATER THAN THE TERMINAL DATE SHOWN IN PARAGRAPH 4.

7. A STATEMENT OF DESIRE THAT DOES NOT COMPLY WITH PARAGRAPHS 5 AND 6 WILL NOT BE ACCEPTED BY THE BOARD.

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.

NO STATEMENT OF DESIRE WAS RECEIVED BY THE BOARD, NOR DID ANY PERSON APPEAR AT THE HEARING OF THIS MATTER TO OPPOSE THE APPLICATION.

4. IF THE ABOVE LETTER IS TO BE REGARDED AS A REQUEST FOR REVIEW OF THE BOARD'S DECISION, IT IS OUR OPINION THAT SUCH REQUEST IS NOT WELL FOUNDED. THE BOARD HAS IN A GREAT MANY CASES FOUND BARGAINING UNITS SUCH AS THAT SET OUT ABOVE TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. REGISTERED NURSING ASSISTANTS HAVE CONSISTENTLY BEEN INCLUDED IN SUCH UNITS. IT WAS OPEN TO SUCH EMPLOYEES TO ATTEND THE BOARD'S HEARING AND MAKE REPRESENTATIONS WITH RESPECT TO THE COMPOSITION OF THE BARGAINING UNIT, BUT THIS WAS NOT DONE.

5. FINALLY, IT MAY BE NOTED THAT THE LETTER CONTAINS A LIST OF NAMES OF PERSONS "TO BE EXCLUDED FROM THE UNION CONTRACT". WHILE THE BOARD ESTABLISHED A UNIT OF EMPLOYEES WITH RESPECT TO WHICH A TRADE UNION IS ENTITLED TO BARGAIN, THE DESCRIPTION OF THE BARGAINING UNIT ACTUALLY SET FORTH IN A COLLECTIVE AGREEMENT IS A MATTER FOR THE AGREEMENT OF THE PARTIES, THAT IS TO SAY THAT THE EMPLOYER AND THE TRADE UNION MAY, BY AGREEMENT, SET OUT A BARGAINING UNIT DIFFERENT FROM THAT ESTABLISHED BY THE BOARD. REPRESENTATIONS SUCH AS THOSE CONTAINED IN THE ABOVE LETTER, THEREFORE, MIGHT PROPERLY BE ADDRESSED TO THE PARTIES TO THE COLLECTIVE AGREEMENT.

6. FOR ALL THE FOREGOING REASONS, THE BOARD'S DECISION IN THIS MATTER IS CONFIRMED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

12582-66-U: MR. IAN HOOD (COMPLAINANT) V. GENERAL BAKERIES LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN,  
AND BOARD MEMBERS P. J. O'KEEFE AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 22, 1967.

1. THE COMPLAINANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER, DATED JANUARY 24, 1967, DISMISSING THE COMPLAINT. THE BASIS FOR THE REQUEST IS THAT THE BARGAINING RIGHTS OF THE UNION MAY BE TERMINATED OR THAT THE UNION MAY NOT PRESS THE ARBITRATION PROCEEDINGS TO A CONCLUSION.

2. THE FACT THAT SOMETHING MAY OR MAY NOT HAPPEN IN THE FUTURE IS NOT A REASON IN OUR VIEW FOR CHANGING OUR ORIGINAL DECISION IN THIS MATTER. IT MAY BE, ALTHOUGH IT IS NOT NECESSARY FOR US TO DECIDE AT THIS TIME AND WE DO NOT DO SO, THAT IF THE BARGAINING RIGHTS OF THE UNION ARE IN FACT TERMINATED AND/OR IF THE ARBITRATION PROCEEDINGS ARE NOT PROCESSED FURTHER, THE COMPLAINANT WOULD HAVE THE RIGHT TO REQUEST RECONSIDERATION OR FILE A NEW COMPLAINT.

3. THE REQUEST FOR RECONSIDERATION IS DENIED.



EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

12694-66-R: LOCAL UNION 498, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. STRADWICKS LTD. (RESPONDENT).

THE APPLICANT FAILED TO FILE WITH THE BOARD FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. IN ACCORDANCE WITH ITS USUAL PRACTICE THE APPLICATION IS THEREFORE DISMISSED.

(FEBRUARY 15, 1967).

12708-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. VALENTINE ENTERPRISES CONTRACTING LIMITED (RESPONDENT).

4. IN ITS REPLY, THE RESPONDENT REQUESTED A HEARING ON THE GROUND THAT NEGOTIATIONS ARE UNDERWAY BETWEEN THE HAMILTON AND DISTRICT SEWER AND WATERMAIN ASSOCIATION AND A COUNCIL OF TRADE UNIONS, ONE OF THE CONSTITUENT MEMBERS OF WHICH IS THE APPLICANT. THE RESPONDENT WISHES TO BECOME A SIGNATORY TO ANY ENSUING COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE COUNCIL. THIS IS A MATTER WHICH, IN OUR VIEW, IS THE SUBJECT OF COLLECTIVE BARGAINING BETWEEN THE APPLICANT AND THE RESPONDENT RATHER THAN A QUESTION TO BE DETERMINED BY THIS BOARD. THE FACT THAT THE APPLICANT MAY BE CERTIFIED WITH RESPECT TO A UNIT OF EMPLOYEES OF THE RESPONDENT WOULD NOT PRECLUDE THE RESPONDENT FROM SIGNING THE ASSOCIATION AGREEMENT PROVIDING THE APPLICANT AGREED THERETO. IN THESE CIRCUMSTANCES, WE SEE NO REASON TO PUT THIS MATTER ON FOR HEARING. REFERENCE IS MADE TO SECTION 75(9A) OF THE LABOUR RELATIONS ACT.

(FEBRUARY 15, 1967).

12709-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. TRAUGOTT CONSTRUCTION LIMITED (RESPONDENT).

6. THE BOARD NOTES THAT THE RESPONDENT HAS NOW WAIVED ITS REQUEST FOR A HEARING.

WITH RESPECT TO THE MATTERS RAISED IN THE RESPONDENT'S REPLY, IT IS POINTED OUT THAT THE FACT THAT A PROJECT AFFECTED BY THE APPLICATION WILL BE COMPLETED SHORTLY, THAT NO FURTHER PROJECTS ARE PLANNED FOR THE AREA AND THAT THE RESPONDENT WILL NOT HAVE EMPLOYEES WORKING IN THE AREA ARE NOT MATTERS THAT THE BOARD NORMALLY CONSIDERS IN DECIDING WHETHER A CERTIFICATE SHOULD ISSUE TO THE APPLICANT. THE QUESTION IS WHETHER THERE WERE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. SEE SECTION 7 OF THE LABOUR RELATIONS ACT, AND ATCO INDUSTRIES LTD., O.L.R.B. MONTHLY REPORT, MARCH, 1966, P. 905 AND MOLLENHAUER CONTRACTING COMPANY LIMITED CASE, BOARD FILE NO. 11414-65-R.

FURTHER, THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS THE ONE NORMALLY GRANTED BY THE BOARD IN CASES OF THIS KIND.

THERE IS NOTHING BEFORE US WHICH, IN OUR VIEW, WOULD JUSTIFY A DEPARTURE IN THIS CASE FROM THE BOARD'S USUAL PRACTICE.

(FEBRUARY 17, 1967).

12723-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA  
(APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT).

5. THE RESPONDENT ALLEGES THAT THE JOB AFFECTED BY THIS APPLICATION WILL BE COMPLETED BY FEBRUARY 21, 1967. THE FACT THAT THE EMPLOYER DOES NOT HAVE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE BOARD WOULD ISSUE A CERTIFICATE HAS NOT BEEN HELD BY THE BOARD TO BE A GROUND FOR REFUSAL TO ISSUE A CERTIFICATE, PROVIDING ALL THE BOARD'S OTHER REQUIREMENTS HAVE BEEN MET. SEE TRIO CARPENTERS (CONTRACTORS) CASE, O.L.R.B. MONTHLY REPORT, DECEMBER, 1962, P. 333.

(FEBRUARY 17, 1967).

STATISTICAL TABLES FOR FEBRUARY 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	FEBRUARY 1967	11 MONTHS OF FISCAL YEAR 1966-67	1965-66
I. CERTIFICATION	81	853	883
II. DECLARATION TERMINATING BARGAINING RIGHTS	2	37	66
III. DECLARATION OF SUCCESSOR STATUS	2	14	25
IV. DECLARATION THAT STRIKE UNLAWFUL	1	29	48
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	4
VI. CONSENT TO PROSECUTE	4	84	89
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	30	123	96
VIII. MISCELLANEOUS	<u>7</u>	<u>60</u>	<u>48</u>
TOTAL	<u>127</u>	<u>1201</u>	<u>1259</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	FEBRUARY 1967	11 MONTHS OF FISCAL YEAR 1966-67	1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	91	865	1043

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY MAJOR TYPES

		NUMBER DISPOSED OF		
		FEBRUARY 1ST 11 MONTHS OF FISCAL YEAR		
		1967	1966-67	1965-66
I.	CERTIFICATION	76	873	890
II.	DECLARATION TERMINATING BARGAINING RIGHTS	7	36	56
III.	DECLARATION OF SUCCESSOR STATUS	-	10	28
IV.	DECLARATION THAT STRIKE <sup>1</sup> UNLAWFUL	1	28	48
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	1	4
VI.	CONSENT TO PROSECUTE	8	74	86
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	106	18
VIII.	MISCELLANEOUS	<u>3</u>	<u>65</u>	<u>98</u>
TOTAL		<u>101</u>	<u>1193</u>	<u>1228</u>



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	FEBRUARY 1ST 11 MTHS FISCAL YR. 1967	1966-67	1965-66	FEBRUARY 1ST 11 MTHS FISCAL 1967	1966-67	1965-
I. <u>CERTIFICATION</u>						
GRANTED	51	638	659	1301	3067	1777
DISMISSED	13	155	156	1027	12104	1683
WITHDRAWN	<u>12</u>	<u>80</u>	<u>75</u>	<u>330</u>	<u>1271</u>	<u>347</u>
TOTAL	<u>76</u>	<u>873</u>	<u>890</u>	<u>2658</u>	<u>16442</u>	<u>4808</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	6	23	26	83	636	156
DISMISSED	1	12	25	18	297	74
WITHDRAWN	<u>-</u>	<u>1</u>	<u>5</u>	<u>-</u>	<u>203</u>	<u>2</u>
TOTAL	<u>7</u>	<u>36</u>	<u>56</u>	<u>101</u>	<u>1136</u>	<u>258</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTAL FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>FEBRUARY 1ST 11 MONTHS OF FISCAL YEAR</u>		
		<u>1967</u>	<u>1966-67</u>	<u>1965-66</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	1	5	8
	DISMISSED	-	2	4
	WITHDRAWN	-	21	36
	TOTAL	<u>1</u>	<u>28</u>	<u>48</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	4
	WITHDRAWN	-	1	-
	TOTAL	<u>-</u>	<u>1</u>	<u>4</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	1	8	31
	DISMISSED	3	14	15
	WITHDRAWN	3	51	40
	TOTAL	<u>7</u>	<u>73</u>	<u>86</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FEBRUARY 1ST 11 MONTHS OF FISCAL YEAR 1967	1966-67	1965-66
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	3	19	24
POST-HEARING VOTE	2	34	31
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	9	6
POST-HEARING VOTE	1	53	36
BALLOTS NOT COUNTED	-	-	2
TOTAL	<u>6</u>	<u>115</u>	<u>100</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FEBRUARY 1ST 11 MONTHS OF FISCAL YEAR 1967	1966-67	1965-66
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSUCCESSFUL	<u>3</u>	<u>17</u>	<u>20</u>
TOTAL	<u>3</u>	<u>21</u>	<u>21</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

MARCH 1967



ONTARIO

# *Monthly Report*

ONTARIO LABOUR RELATIONS BOARD







## TERMINATION (CONTINUED)

12766-66-R:	INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)	976
12852-66-R:	CANADIAN UNION OF OPERATING ENGINEERS	979

## SUCCESSOR STATUS

12596-66-R:	THE RESILIENT FLOOR WORKERS UNION, LOCAL 2965, CONFEDERATION OF NATIONAL TRADE UNIONS	980
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## PROSECUTION

12596-66-U:	JOHN WINKLER	981
12570-66-U:	JOHN TRESSIDER	982
12571-66-U:	THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS AND LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS	984
12573-66-U:	CHESLEY YETMAN	987
12574-66-U:	BENNY ANDERSON, ET AL	988
12576-66-U:	KARL ABRAMOVITZ, ET AL	990
12802-66-U:	UNITED STEELWORKERS OF AMERICA	992

## SECTION 65

12645-66-U:	THE CANADIAN H. W. GOSSARD CO. LIMITED	994
12698-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12699-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12700-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12701-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12702-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12703-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12743-66-R:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12744-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12745-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12749-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12758-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997

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12759-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12760-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12761-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12764-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12767-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12783-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997
12784-66-U:	INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO	997

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12796-66-M:	UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION No. 2486	1000
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12769-66-M:	BOROUGH OF ETOBICOKE; ETOBICOKE TOWNSHIP CIVIC EMPLOYEES, LOCAL UNION #185 CUPE-CLC; CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 36; THE EMPLOYEES OF NEW TORONTO, LOCAL 230, CUPE; LONG BRANCH CIVIC EMPLOYEES LOCAL UNION 266, CANADIAN UNION OF PUBLIC EMPLOYEES; LOCAL UNION 636 OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS	1001
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11373-65-M:	TORONTO TRANSIT COMMISSION, AND DIVISION 113, AMALGAMATED TRANSIT UNION	1006
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11635-66-M:	SILVERWOOD EMPLOYEES' ASSOCIATION (BRANTFORD BRANCH)	1013
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14. EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES	1014
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## 15. ADDENDA

12089-66-R:	GOLDLIST CONSTRUCTION LIMITED	1016
11831-66-R:	UNI-FORM BUILDERS LTD.	1019
11846-66-R:	UNI-FORM BUILDERS LTD.	1019



APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MARCH 1967

BARGAINING AGENTS CERTIFIED DURING MARCH

NO VOTE CONDUCTED

12565-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT)  
V. HIGH SCHOOL BOARD OF EASTVIEW (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE BUSINESS ADMINISTRATOR, THE MANAGER OF THE CAFETERIA, OFFICE STAFF, PROFESSIONAL TEACHING STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 957).

12568-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944 (APPLICANT)  
V. CORPORATION OF THE COUNTY OF HURON - HURONVIEW HOME FOR THE AGED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT HURONVIEW HOME FOR THE AGED AT CLINTON, SAVE AND EXCEPT THE CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

12583-66-R: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, WINDSOR, ONTARIO, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO-CLC) (APPLICANT) V. SYDENHAM DISTRICT HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (75 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

12630-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. THE DOMINION ROAD MACHINERY COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT GODERICH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND SALESMEN." (25 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12656-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SILVERWOOD DAIRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT ORILLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM FOREMEN INCLUDES ROUTE FOREMEN.

(SEE INDEXED ENDORSEMENT PAGE 961 ).

12707-66-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. E. S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE EVIDENCE OF THE APPLICANT'S HISTORY AND PATTERN OF COLLECTIVE BARGAINING AS IT RELATES TO GEOGRAPHIC AREAS, THE GEOGRAPHIC JURISDICTION OF THE APPLICANT UNDER ITS DISTRICT COUNCIL BY-LAWS, AND THE GEOGRAPHIC AREA THAT HAS BEEN ENCOMPASSED IN RECENT COLLECTIVE AGREEMENTS ENTERED INTO BY THE APPLICANT.

(SEE INDEXED ENDORSEMENT PAGE 963 ).

12714-66-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT) V. OTIS-STARR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 965 ).

12716-66-R: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION AFL-CIO-CLC) (APPLICANT) V. THE CORPORATION OF THE COUNTY OF HURON HURONVIEW COUNTY HOME FOR THE AGED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CLINTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY THE BOARD'S CERTIFICATE ISSUED TO THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944." (81 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

12719-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504, (APPLICANT) V. KOSMACK & PRICE LIMITED (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS, SHEET METAL APPRENTICES AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF TECK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS COVERED BY AN EXISTING CERTIFICATE OR COLLECTIVE AGREEMENT." (3 EMPLOYEES IN THE UNIT).

12729-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT). V. CLIFFSIDE PIPE LAYERS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS SHOP AT 145 FENMAR DRIVE, WESTON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12730-66-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L (APPLICANT) V. DANFORTH PRESS LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

12731-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC. (APPLICANT) V. CECUTTI'S BAKERY LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS BAKERY AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, RETAIL STORE PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SUDBURY AND DISTRICT GENERAL WORKERS UNION, LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (51 EMPLOYEES IN THE UNIT).

12741-66-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 532 (APPLICANT) V. MCMASTER UNIVERSITY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON EMPLOYED IN ITS ENGINEERING MACHINE SHOP, NUCLEAR INSTRUMENT MACHINE SHOP AND SENIOR SCIENCE'S INSTRUMENT MACHINE SHOP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, ACADEMIC PERSONNEL, TECHNICAL PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12742-66-R: NURSES' ASSOCIATION HALTON COUNTY HEALTH UNIT (APPLICANT) V. THE CORPORATION OF THE COUNTY OF HALTON (RESPONDENT).

UNIT: "ALL GRADUATE AND REGISTERED NURSES EMPLOYED BY THE RESPONDENT IN ITS HALTON COUNTY HEALTH UNIT, SAVE AND EXCEPT THE SUPERVISOR OF NURSES, PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSES AND OFFICE STAFF." (20 EMPLOYEES IN THE UNIT).

12746-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, (APPLICANT) V. STANDARD STRUCTURAL STEEL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12747-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. BORDER CITY EXCAVATORS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (3 EMPLOYEES IN THE UNIT).

12751-66-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT) V. STEEL CITY MOTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT CAR SALESMEN, SERVICE SALESMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF." (22 EMPLOYEES IN THE UNIT).



12753-66-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT)  
V. MIKE BOSTON'S AUTO BODY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF."  
(8 EMPLOYEES IN THE UNIT).

12754-66-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT)  
V. GAETZ FORD SALES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES STAFF, AND OFFICE AND CLERICAL STAFF." (12 EMPLOYEES IN THE UNIT).

12755-66-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT) V.  
FACTORY AUTO BODY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND CLERICAL STAFF."  
(8 EMPLOYEES IN THE UNIT).

12765-66-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 242  
(APPLICANT) V. AD PLATE LIMITED (RESPONDENT).

UNIT: "ALL ARTISTS, PHOTOENGRAVERS, LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(9 EMPLOYEES IN THE UNIT).

12773-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 233  
(APPLICANT) V. INDPRO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(14 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DRAFTSMEN AND ENGINEERING STAFF ARE INCLUDED WITHIN THE PHRASE OFFICE STAFF AS IT APPEARS IN THE PRECEDING PARAGRAPH.

12774-66-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 233  
(APPLICANT) V. ARGO METAL WORKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(6 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DRAFTSMEN AND ENGINEERING STAFF ARE INCLUDED WITHIN THE PHRASE OFFICE STAFF AS IT APPEARS IN THE PRECEDING PARAGRAPH.

12776-66-R: LOCAL 210, BUILDING SERVICE EMPLOYEES' UNION, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION AFL-CIO-CLC (APPLICANT) V. BOARD OF PUBLIC SCHOOL TRUSTEES OF THE TOWNSHIP SCHOOL AREA OF SANDWICH SOUTH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT OFFICE STAFF AND PROFESSIONAL TEACHING STAFF." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 969 ).

12778-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. ALLIED BUILDING SUPPLY (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT THE PLACE DE VILLE, LYON STREET, OTTAWA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."  
(4 EMPLOYEES IN THE UNIT).

12786-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE I.B.T.C.W. & H. OF AMERICA (APPLICANT) v. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS VENDING DIVISION AT BRANTFORD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

12791-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FRANKEN SPRINGS LIMITED, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF REGAL SPRING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

12792-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. KILMER VAN NOSTRAND Co. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS AND SHOP AND YARD EMPLOYEES." (3 EMPLOYEES IN THE UNIT).

12793-66-R: FOOD HANDLERS LOCAL UNION 175 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL. CIO. CLC (APPLICANT) v. POWER SUPER MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT."  
(61 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12794-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. DAAL SPECIALTIES (COLLINGWOOD) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (67 EMPLOYEES IN THE UNIT).

12797-66-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, AFL - CIO - CLC, HAMILTON, ONT. (APPLICANT) v. ESTATE OF MARK A. GILBERT AND HYMAN SALTMAN, BRIGHTSIDE PUBLIC HOUSE, HAMILTON, ONTARIO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

12799-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) v. OXFORD PICTURE FRAME CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (81 EMPLOYEES IN THE UNIT).

12801-66-R: GENERAL TRUCK DRIVERS UNION, LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. SMELLIE'S TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

12803-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. WEST YORK CONSTRUCTION, DIVISION OF TORYORK SALES LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12804-66-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, CLC (APPLICANT) v. WEBSTER & HORSFALL (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (17 EMPLOYEES IN THE UNIT).

12805-66-R: NURSES' ASSOCIATION GUELPH DEPARTMENT OF HEALTH (APPLICANT) v. DEPARTMENT OF HEALTH, CITY OF GUELPH (RESPONDENT).

UNIT: "ALL REGISTERED NURSES AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT."  
(10 EMPLOYEES IN THE UNIT).

12807-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. D & D  
COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BROCKVILLE STORES REGULARLY  
EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING  
THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

12808-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL  
IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. DRYING SYSTEMS CANADA LTD.  
(RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN  
THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT,  
UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CART-  
WRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING  
THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE  
AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL,  
SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING  
FOREMAN." (4 EMPLOYEES IN THE UNIT).

12809-66-R: LOCAL UNION No. 232, INTERNATIONAL UNION OF UNITED BREWERY,  
FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC  
(APPLICANT) V. DAINTY FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN,  
PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (30 EMPLOYEES IN THE  
UNIT).

12814-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. R & I-RAMTITE (CANADA)  
LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN,  
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS  
EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

12815-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION  
OF THE UNITED STATES AND CANADA LOCAL UNION No. 124, OTTAWA - HULL (APPLICANT)  
V. FRANK LICARI, DOMINIC LACARI, ANGELO LICARI AND BENNY LICARI CARRYING ON  
BUSINESS IN PARTNERSHIP AS FRANK LICARI & SONS (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE  
RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH  
TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND  
PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

12818-66-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 749  
(APPLICANT) V. HARROP CERAMICS SERVICE COMPANY (RESPONDENT).



UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

12820-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT BROCKVILLE, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (34 EMPLOYEES IN THE UNIT).

12826-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. DUFFERIN MATERIALS & CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12829-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CANADIAN CYLINDER CO., (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT)

(SEE INDEXED ENDORSEMENT PAGE 970 ).

12831-66-R: LOCAL UNION 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. STOIC CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH; WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

12834-66-R: INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL #1494 (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12836-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. OTOMARC MANUFACTURERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

12837-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GLOBE SPRING AND CUSHION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT).

12839-66-R: LOCAL UNION 46 - THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. GOVERNORS OF THE UNIVERSITY OF TORONTO (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER #1) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (INTERVENER #2).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN AND OUT OF ITS PHYSICAL PLANT DEPARTMENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SPECIAL CIRCUMSTANCES OF THE RESPONDENT'S OPERATIONS).

12842-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1946 (APPLICANT) V. THAMES GLASS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT PERSONS ENGAGED IN THE MANUFACTURE OF ALUMINUM WINDOWS, FRAMES AND STORE-FRONTS IN THE SHOP ARE NOT INCLUDED IN THE BARGAINING UNIT.

12843-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. D. A. CLARKE VENEERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SOUTH RIVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

12844-66-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. NORFOLK FRUIT GROWERS' ASSOCIATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SIMCOE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

12845-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC. (APPLICANT) V. CENTRAL SUPER MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT SARNIA, SAVE AND EXCEPT THE STORE MANAGER, MEAT MANAGER, GROCERY MANAGER, PRODUCE MANAGER, BAKERY MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12851-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL #397 (APPLICANT) V. KILMER VAN NOSTRAND CO. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITEBY, EAST WHITEBY, SCOTT, UXBRIDGE, AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

12855-66-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS (APPLICANT) V. EDWARD GRAIN LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORE AND WAREHOUSE IN SUDBURY, SAVE AND EXCEPT MANAGERS, THOSE ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

12863-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. LINO DEBERTOLI MASONRY LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12864-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. LINO DEBERTOLI MASONRY LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLFORTH AND IN THE TOWNSHIP OF MASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12865-66-R: WOOD WIRE AND METAL LATHERS INTERNATIONAL UNION LOCAL 112, OTTAWA, ONTARIO - HULL, QUEBEC (APPLICANT) v. ROLAND LEBEYRE LAITING TD., 30 SAVARD AVENUE, OTTAWA 7, ONTARIO (RESPONDENT) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (INTERVENER).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER." (13 EMPLOYEES IN THE UNIT).

12880-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. MOJAN LTEE (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

12704-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. SOMERVILLE INDUSTRIES LIMITED (RESPONDENT) v. LOCAL 247, LONDON-LITHOGRAPHERS & PHOTO-ENGRAVERS INT'L UNION (INTERVENER #1) v. CANADIAN CONTAINER WORKERS' UNION, SOMERVILLE DIV. NO. 1 NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER #2) v. INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF N.A. (INTERVENER #3).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LONDON DIVISION, SAVE AND EXCEPT FOREMEN, ASSISTANT FOREMEN, PERSONS ABOVE THE RANKS OF FOREMAN AND ASSISTANT FOREMAN, OFFICE STAFF, FACTORY CLERKS, SECURITY GUARDS, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT AND LOCAL 247, LONDON-LITHOGRAPHERS & PHOTOENGRAVERS INTERNATIONAL UNION, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT AND THE INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA." (252 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT AND REPRESENTATIONS OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	230
NUMBER OF PERSONS WHO CAST BALLOTS	226
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	128
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
CANADIAN CONTAINER WORKERS' UNION,	
SOMERVILLE DIV. NO. 1 NATIONAL COUNCIL	
OF CANADIAN LABOUR	98



12725-66-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT)  
V. CANADIAN JOHNS-MANVILLE COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL  
UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR  
HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT IN WEST  
HILL (FOR THE PURPOSES OF CLARITY, PORT UNION ROAD AND COL. DANFORTH TRAIL,  
PORT UNION), SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK  
OF CHIEF ENGINEER." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	0

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

11456-65-R: NURSES' ASSOCIATION BROCKVILLE GENERAL HOSPITAL (APPLICANT) V.  
BROCKVILLE GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT  
BROCKVILLE ENGAGED IN NURSING CARE AND REGULARLY EMPLOYED FOR NOT MORE  
THAN 24 HOURS PER WEEK, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE  
RANK OF HEAD NURSE." (112 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	82
NUMBER OF PERSONS WHO CAST BALLOTS	50
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	50
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

12325-66-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA  
(APPLICANT) V. E. H. FERREE COMPANY LIMITED (RESPONDENT) V. GROUP OF  
EMPLOYEES).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT  
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS  
EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED  
FOR NOT MORE THAN 24 HOURS PER WEEK." (139 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	95
NUMBER OF PERSONS WHO CAST BALLOTS	122
BALLOTS SEPARATED AND NOT COUNTED	27

NUMBER OF SPOILED BALLOTS 1  
 NUMBER OF BALLOTS MARKED IN FAVOUR  
 OF APPLICANT 51  
 NUMBER OF BALLOTS MARKED AGAINST  
 APPLICANT 43

12396-66-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO, CLC  
 (APPLICANT) V. DOMINION GLASS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG,  
 SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD,  
 ASSISTANT OFFICE MANAGER, ASSISTANT TO PRODUCT MANAGER, PROFESSIONAL ENGINEERS,  
 THE CONFIDENTIAL SECRETARY SHARED BY THE FACTORY MANAGER AND THE OFFICE MANAGER,  
 REGISTERED NURSES, SALESMEN, SECURITY GUARDS, AND PERSONS REGULARLY EMPLOYED FOR  
 NOT MORE THAN 24 HOURS PER WEEK." (70 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
 VOTERS' LIST 71  
 NUMBER OF BALLOTS CAST 72  
 BALLOTS SEGREGATED AND NOT COUNTED 3  
 NUMBER OF BALLOTS MARKED IN FAVOUR  
 OF APPLICANT 59  
 NUMBER OF BALLOTS MARKED AGAINST  
 APPLICANT 10

12623-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GENERAL WIRE &  
 CABLE Co. LTD. (RESPONDENT) V. INDEPENDENT WORKERS UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COBOURG PLANTS, SAVE AND EXCEPT  
 FOREMEN PERSONS ABOVE THE RANK OF FOREMAN, STATIONARY ENGINEERS, TECHNICAL  
 AND PROFESSIONAL EMPLOYEES IN THE DEVELOPMENT AND CONTROL DEPARTMENTS,  
 LABORATORY EMPLOYEES, FACTORY OFFICE STAFF, OFFICE STAFF AND SALES STAFF."  
 (182 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
 VOTERS' LIST 182  
 NUMBER OF PERSONS WHO CAST BALLOTS 180  
 NUMBER OF SPOILED BALLOTS 1  
 NUMBER OF BALLOTS MARKED IN FAVOUR  
 OF APPLICANT 102  
 NUMBER OF BALLOTS MARKED IN FAVOUR  
 OF INTERVENER 77

12667-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS  
 (APPLICANT) V. KELSEY-HAYES CANADA LIMITED (RESPONDENT) V. INTERNATIONAL UNION,  
 UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)  
 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT ON BEARD'S LANE IN WOODSTOCK,  
 SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES  
 STAFF." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	15

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

12422-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. LIVINGSTON WOOD MANUFACTURING LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (114 EMPLOYEES).

12554-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. POWER CONTROLS DIVISION - MIDLAND-ROSS OF CANADA LIMITED (RESPONDENT) V. THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 568 (INTERVENER) (22 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 954 ).

12787-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. JOHNSON BROS. COMPANY LIMITED (RESPONDENT). (13 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

12508-66-R: CANADIAN UNION OF GENERAL EMPLOYEES CHARTERED BY THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE SALVATION ARMY GRACE HOSPITAL (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL 929 (INTERVENER)

VOTING CONSTITUENCY: "ALL LAY EMPLOYEES AT THE RESPONDENT HOSPITAL AT TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER HOUSE OF THE RESPONDENT AT ITS HOSPITAL AT TORONTO." (55 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	55
NUMBER OF PERSONS WHO CAST BALLOTS	53
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	15
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	38

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

12422-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. LIVINGSTON WOOD MANUFACTURING LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (114 EMPLOYEES).

12780-66-R: CANADIAN ELECTRICAL TRADE UNION (APPLICANT) V. FRITZ ELECTRIC LIMITED (RESPONDENT). (27 EMPLOYEES).

12838-66-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. MODERN SHOE COMPANY LTD. (RESPONDENT). (23 EMPLOYEES).

12873-66-R: LOCAL UNION 2028, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (AFL-CIO-CLC) (APPLICANT) V. THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF PORT HOPE (RESPONDENT). (6 EMPLOYEES).

12881-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ELWOOD ROBINSON LIMITED (RESPONDENT). (9 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING

MARCH

12599-66-R: LAWRENCE TAILLON (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, A.F.L., C.I.O., C.L.C., (RESPONDENT) V. FIBEREZ OF CANADA LIMITED (INTERVENER)

UNIT: "ALL EMPLOYEES OF THE INTERVENER COMPANY WORKING AT ITS CORNWALL PLANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT). (GRANTED).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	8

12639-66-R: 1. MARIO AREZZA, AND 2. BONIFACIO MOSCA, REPRESENTING A GROUP OF EMPLOYEES (APPLICANT) V. RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461 (RESPONDENT). (GRANTED).

UNIT: "ALL HOURLY RATED PLANT EMPLOYEES OF GENERAL BAKERIES LIMITED AT 21 CARR STREET, TORONTO, AND AT ITS SALES DEPOTS AT HAMILTON AND ST. CATHARINES, SAVE AND EXCEPT FOREMEN, SUPERVISORS, ROUTE SALESMEN, SPARE SALESMEN AND DRIVERS, TIME OFFICE ADMINISTRATIVE AND GENERAL OFFICE EMPLOYEES, AND ANY EMPLOYEES REGULARLY EMPLOYED FOR LESS THAN 24 HOURS PER WEEK." (186 EMPLOYEES IN THE UNIT).



NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	186
NUMBER OF PERSONS WHO CAST BALLOTS	160
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	45
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	135

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MARCH

12596-66-R: THE RESILIENT FLOORING CONTRACTORS ASSOCIATION OF ONTARIO (TORONTO SECTION) (APPLICANT) V. THE RESILIENT FLOOR WORKERS UNION, LOCAL 2965, CONFEDERATION OF NATIONAL TRADE UNIONS (RESPONDENT) V. LOCAL UNION No. 2965, OF TORONTO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ALSO KNOWN AS LOCAL 2965, THE RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O. (PREDECESSOR TRADE UNION).

(SEE INDEXED ENDORSEMENT PAGE 980).

12686-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SILVERWOOD DAIRIES LIMITED (RESPONDENT) V. SILVERWOOD EMPLOYEES' ASSOCIATION (STRATFORD BRANCH) (PREDECESSOR TRADE UNION). (GRANTED).

12738-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. THE CANADA STARCH COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MARCH

12869-66-U: RELIABLE FUR DRESSERS & DYERS LIMITED (APPLICANT) V.

MR. V. AGUIAR	MR. J. W. HERZIK	MR. B. PEIKOS
MRS. K. ANDREPOULOS	MR. M. HRYB	MR. H. PETERS
MR. E. ANDRADE	MR. S. JACKOWICH	MR. A. OLIVEIRA
MR. J. ANDRADE	MR. S. JAKOWITZ	MR. M. OZVATICH
MR. T. ANDANOFF	MR. P. JOSEPH	MR. J. OLEKSA
MR. I. ANGELOPOULOS	MR. J. JUNYK	MR. M. PACHECO
MR. P. AURAKIS	MRS. DORIS KAPUSHYNSKI	MR. S. POPOWYCZ
MR. W. BACINSKI	MR. J. KORNELUK	MRS. B. PUCILOWSKI
MR. S. BOJOUN	MRS. A. KOWAL	MR. H. REGADO
MR. J. CARRIER	MR. G. KOUTLEMANIS	MR. A. REPOPOULOS
MRS. I. CALANIA	MR. A. KOZIOŁ	MRS. E. RUDNICKI
MR. M. CALANIA	MR. S. LABIAK	MR. A. SARUTSCHATZKI

MR. E. CALLITSIS	MR. J. LESKIW	MR. I. SCITANO
MR. A. CATOJO	MR. J. LITSAS	MR. W. SCHOELLHAMMER
MR. F. CHORMONEZ	MR. A. MAKOWSKI	MR. M. SIAPAS
MR. L. CHOUINARD	MR. P. MALAJOUZUK	MRS. Z. SKLIROU
MR. D. COELHO	MR. D. MANTUA	MRS. P. SWITCHEWICZ
MR. G. COLASSANTE	MR. V. MARICH	MR. C. STASOFF
MR. B. E. CORDIERO	MR. G. MARTINS	MR. P. TASSOPOULOS
MRS. R. CHIBA	MR. JOAO MARTIN	MR. M. TAVARES
MR. C. CUSTODIO	MR. M. MARTINS	MRS. S. TKACH
MR. J. CUSTODIO	MR. J. MASLIK	MR. J. TOME
MR. F. DENEK	MR. J. MIRON	MRS. S. TAX
MR. M. DIMAKOPOULOS	MR. S. MISTAK	MRS. S.T. TROFYMOVICH
MR. A. DE ANDRADE	MR. J. MYKYTUK	MR. I. TYRO
MR. J. DE ANDRADE	MRS. A. NAKONECHNY	MR. E. UNIAT
MR. J. DUNIEC	MR. G. NAUMOFF	MR. P. UNIAT
MR. D. EFTHIMIADIS	MR. J. NEEDEL	MR. A. VITAL
MR. J. EIRAS	MRS. A. NEPOTUK	MR. P. VLACHOS
MR. B. ELEUTERIO	MR. W. NESTERUK	MR. M. VITORINO
MRS. O. FYDENCHUK	MRS. T. NISHIMURA	MR. F. WILCOX
MR. P. COJDOS	MR. N. NOWOSAD	MR. Z. ZAFIRIOUS
MR. W. HAWRYLUK	MRS. A. PARAYSKI (RESPONDENTS). (GRANTED).	

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

12569-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. JOHN WINKLER (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 981 ).

12570-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. JOHN TRESSIDER (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 982 ).

12571-66-R: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS AND LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 984 ).

12572-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. DENIS DELANEY, LEO HEBERT, BENJAMIN VINCENT, LLOYD KINSELLA, WILLIAM CORBETT, WILLIAM WEBBER (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 985 ).

12573-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. CHESLEY YETMAN (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 987 ).

12574-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) v. BENNY ANDERSON, BERNARD ARSENEAU, BRIAN BEAUMONT, THOMAS BEAUVAIS, BERARD BEGIN, FRANK BERGERON, KLEMENS BEYFUSE, EARL BRANT, MICHAEL BRIDGEMAN, BERNARD BRODERS, SYLVESTER BRODERS, OSCAR BROWN, ROGER BRULE, ROBERT CARPANINI, DOUGLAS COLLIER, R. WILLIAM CORBETT, JOHN COX, RONALD CROSS, THOMAS CRYAN, DOBRIVOJE CVETINOVIC, FRANK DALES, DENIS DELANEY, VICTOR EASY, GEORGE FULTON, LOUIS GALLANT, PETER GAMBLIN, HENRY HARTGERINK, EDMOND HEBERT, LEO HEBERT, STEPHEN HOWARD, WALTER HRAPCHAK, LEO HUARD, GERALD JONES, LLOYD KINSELLA, JOHN KULCHAR, LAWRENCE LABATT, TENNYS LABATT, HARRY LACROIX, JEAN LA FLEUR, PAUL LEBLANC, LENNOX LEPINE, PHILIP MACLENNAN, PALMO MARINO, JOZEF MAZNIK, JAMES McDONALD, MICHAEL McNULTY, MYRLE McRAE, CHARLES MELANSON, ALEX MEZALS, GEORGE MIHALDINECZ, MAXWELL MILLEN, CLIFFORD MONSON, CLARENCE MORIN, DONALD MULLINS, DANNY NANOS, FERDINAND PAGE, BEN PENNY, KARL, SR. PRAGER, KARL PRAGER, JEAN PAUL RAYMOND, RUSSELL REID, PHIL RICHARDS, JOHN ROBERTSON, FRED ROMANO, ERNEST RUDOLPH, EDMUND SQUISSATO, LOUIS STRUCEL, JAMES TAYLOR, RAYMOND THIBODEAU, JOSEPH THOMAS, ANTHONY TRENTIN, RICHARD TROTTER, CYR TROTTIER, ALLAN TRAYNOR, THOMAS TURNER, ELMAR VASILIS, BENJAMIN VINCENT, WILLIAM WEBBER, DESMOND WELLER, TERRY WETMORE, GEORGE WHITE, JOHN WINKLER, CHESLEY YETMAN, HARVEY ZONEY, (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 988 ).

12576-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) v. KARL ABRAMOVITZ, HENRICUS AKERBOOM, HALBERT ALLISON, JODO ANTUNE, WIESLEY BAUMHOUR, ERNEST J. BERTIN, NOAH BEST, HARRY BIEFEB, GIUSEPPE BOCCITTO, ERNEST BROWN, ERNEST GEORGE BURTON, PETER CLABBY, HAROLD COOMBS, WILLIAM HARRY COOMBS, ALBERT AIME GAUTHIER, ROY STACEY GREEN, NORMAN E. HALE, OCTIS HALL, MICHAEL HYDE, JOHN JANSSEN, ALBERT JOY, PIERRE GILBERT JUNGAS, NORMAN JOSEPH KENNEDY, LUDWIK KIELAR, ANTONIO D. KOSTANYEVEC, ALWYN PERCY LANE, JOHN ANTHONY LEWIS, JAMES MCCANN, GINO MICELLI, FLORENT FRANC MOORTGAT, AARON MURPHY, WILLIAM MURPHY, LESLIE CHARLES NEWMAN, JOSEPH PATRICK OGAR, DAVID O'KEEFE, LAWRENCE PASSEK, LUDGER PHILLIPS, GERARD POIRIER, JOSEPH G. ST. ANDREWS, HOST SCHAB, BARRIE SOLES, WILHELM STEGER, HAYWARD THOMAS, ROBERT OWEN THOMAS (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 990 ).

12678-66-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. TONY'S INDUSTRIAL CATERING LTD. (RESPONDENT). (GRANTED).

12789-66-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. NO-SAG SPRING COMPANY LIMITED (RESPONDENT). (GRANTED).

12802-66-U: NO-SAG SPRING COMPANY LIMITED (APPLICANT) v. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 992 ).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICES) POSED UP DURING

MARCH

12363-66-U: LOCAL 280, HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION (COMPLAINANT) V. DOMINION SPORT SERVICE LIMITED (RESPONDENT). (WITHDRAWN).

12527-66-U: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (COMPLAINANT) V. ORILLIA CLOTHING (RESPONDENT). (WITHDRAWN).

12597-66-U: MR. ANTHONY CAWLEY & MR. JOHN FORREST JR. (COMPLAINANTS) V. CFRB BACKGROUND MUSIC DIVISION (RESPONDENT). (WITHDRAWN).

12602-66-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. BOYLE MIDWAY (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

12637-66-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ST. LAWRENCE TEXTILES LIMITED (RESPONDENT). (WITHDRAWN).

12645-66-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT) V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT). (REINSTATED).

(SEE INDEXED ENDORSEMENT PAGE 994 ).

12684-66-U: CANADIAN UNION OF GENERAL EMPLOYEES CHARTERED BY THE CANADIAN UNION OF OPERATING ENGINEERS (COMPLAINANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT). (WITHDRAWN).

12693-66-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (COMPLAINANT) V. OTIS-STARR LIMITED (RESPONDENT). (WITHDRAWN).

12698-66-U:

12743-66-U:

12760-66-U:

12699-66-U:

12744-66-U:

12761-66-U:

12700-66-U:

12745-66-U:

12764-66-U:

12701-66-U:

12749-66-U:

12767-66-U:

12702-66-U:

12758-66-U:

12783-66-U:

12703-66-U:

12759-66-U:

12784-66-U:

ANDREJ OCEPAK, ANDREJ VESELY, EARL M. GORDON, BOLESZAW ZIMA, STEFAN COSEC, LORNE R. MORRISON, ALBERT MURDOCK, LYLE LEACH, ARTHUR STAINES, ANTHONY MASTRIA, LES STOKER, MILOS DUBOVEC, FRANK ZENG, BILL TOOKE, RAYMOND TISDELL, RICCARDO, BARELLI, HARLEY CULP, AND WILLIAM JENTER (COMPLAINANTS) V. INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 997 ).

12722-66-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO V. OTIS-STARR LIMITED (RESPONDENT). (WITHDRAWN).



12736-66-U: H. V. BERNICE SCOTT (COMPLAINANT) V. NORVIEW HOME FOR THE AGED (RESPONDENT). (WITHDRAWN).

12762-66-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. DE HAAN CARTAGE COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

12824-66-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CLIO:CLC (COMPLAINANT) V. OVERLAND HOTEL (RESPONDENT). (WITHDRAWN).

12832-66-U: SAULT STE. MARIE GENERAL WORKERS UNION, LOCAL 1644 (COMPLAINANT) V. TRAVELADE MOTORS LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR ADDITION OF A PROVISION TO A COLLECTIVE AGREEMENT PURSUANT

TO SECTION 33(2) DISPOSED OF DURING MARCH

12796-66-M: THE SUDBURY BUILDERS' EXCHANGE (GENERAL CONTRACTORS SECTION) (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION No. 2486 (RESPONDENT).

(NO STRIKE NO LOCKOUT PROVISION ADDED TO COLLECTIVE AGREEMENT BETWEEN THE PARTIES)

(SEE INDEXED ENDORSEMENTS PAGES 1000 AND 1001).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

12876-66-M: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 535, AND EATON YALE & TOWNE INC. (YALE CANADIAN DIVISION) (JOINT APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING MARCH

12769-66-M: ETOBICOKE TOWNSHIP CIVIC EMPLOYEES' LOCAL UNION No. C.U.P.E. - C.L.C. (APPLICANT) V. BOROUGH OF ETOBICOKE; ETOBICOKE TOWNSHIP CIVIC EMPLOYEES, LOCAL UNION #185 CUPE-CLC; CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 36; THE EMPLOYEES OF NEW TORONTO, LOCAL 230 CUPE; LONG BRANCH CIVIC EMPLOYEES LOCAL UNION 266, CANADIAN UNION OF PUBLIC EMPLOYEES; LOCAL UNION 636 OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1001).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2)-DISPOSED OF DURING MARCH

12449-66-M: ST. THOMAS PUBLIC LIBRARY BOARD (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES' LOCAL UNION No. 841, AFFILIATED WITH THE CANADIAN LABOUR CONGRESS (RESPONDENT).

JURISDICTIONAL DISPUTE

11373-65-M: INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 235 (COMPLAINANT) V. TORONTO TRANSIT COMMISSION, AND DIVISION 113, AMALGAMATED TRANSIT UNION (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1006).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12507-66-R: LOCAL UNION NO. 500 CANADIAN UNION OF GENERAL EMPLOYEES OF THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL #929 (INTERVENER). (REQUEST WITHDRAWN).

12591-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. FRANCON (1966) LIMITED (RESPONDENT) V. TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS. I.B. OF T. (INTERVENER). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

12573-66-R: RONALD JAMES ROBERTS (ON BEHALF OF A GROUP OF EMPLOYEES) (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL 222 (RESPONDENT). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 39(3)

11635-66-M: SILVERWOOD DAIRIES, LIMITED, BRANTFORD BRANCH, AND SILVERWOOD EMPLOYEES' ASSOCIATION (BRANTFORD BRANCH) (JOINT APPLICANTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1013).

INDEXED ENDORSEMENTS - CERTIFICATION

12537-66-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. CALDWELL LINEN MILLS LIMITED (RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, ON BEHALF OF LOCAL 14080 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: MARTIN LEVINSON AND W. FOLEY FOR THE APPLICANT,  
J. STORIE FOR THE RESPONDENT, IAN SCOTT AND FRANK DALY FOR THE INTERVENER.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFE:

MARCH 16, 1967.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT IROQUOIS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE IN THIS CASE, THE BALLOT BOX WAS SEALED PENDING AN INQUIRY INTO THE CHALLENGE BY THE INTERVENER WITH RESPECT TO THE SUFFICIENCY OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THIS MATTER.

4. THE APPLICANT FILED WITH ITS APPLICATION MEMBERSHIP DOCUMENTS FOR NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY DESCRIBED BY THE BOARD IN ITS DECISION DATED JANUARY 9TH, 1967, IN WHICH DECISION THE PRE-HEARING REPRESENTATION VOTE WAS DIRECTED PURSUANT TO THE PROVISIONS OF SECTION 8(2) OF THE ACT.

5. THE BARGAINING UNIT DEFINED ABOVE IS IN THE IDENTICAL TERMS AND INCLUDES THE SAME PERSONS AS WERE INCLUDED IN THE VOTING CONSTITUENCY DESCRIBED BY THE BOARD IN ITS DECISION OF JANUARY 9TH, 1967. APART FROM ANY OTHER CONSIDERATION WHICH MIGHT BEAR UPON THE ISSUE, THE BOARD WOULD BE IMPELLED TO FIND THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

6. HOWEVER, THE INTERVENER TRADE UNION IN THIS CASE FILED WITH THE BOARD, PRIOR TO THE TERMINAL DATE, DUPLICATE ORIGINALS OF NOTICES OF WITHDRAWAL OF MEMBERSHIP SIGNED BY EMPLOYEES OF THE RESPONDENT WHO WERE CLAIMED BY THE APPLICANT AS MEMBERS. IF THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT FOR PERSONS WHO ALSO SIGNED THE NOTICE OF WITHDRAWAL WERE NOT COUNTED, THEN THE APPLICANT WOULD NOT HAVE FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AS MEMBERS.

7. THE INTERVENER HAS ALLEGED, AND FOR THE PURPOSE OF DEALING WITH THIS MATTER, THE BOARD HAS ASSUMED (BUT NOT FOUND) THAT THE NOTICES OF WITHDRAWAL OF MEMBERSHIP WERE SERVED ON THE APPLICANT PRIOR TO THE MAKING OF THIS APPLICATION. THE BOARD HAS ALSO ASSUMED (BUT NOT FOUND) THAT EVERYTHING WAS PROPER WITH RESPECT TO THE MANNER IN WHICH THE DOCUMENTS WERE ORIGINATED AND WERE SIGNED.

8. THE QUESTION BEFORE THE BOARD IS, WHAT EFFECT DO WRITTEN NOTICES OF WITHDRAWAL OF MEMBERSHIP HAVE ON AN APPLICANT'S MEMBERSHIP EVIDENCE WHEN THE NOTICES OF WITHDRAWAL ARE SERVED ON AN APPLICANT PRIOR TO MAKING OF A PRE-HEARING REPRESENTATION VOTE APPLICATION.

9. IT SHOULD BE NOTED THAT IN A PRE-HEARING REPRESENTATION VOTE APPLICATION NEITHER THE ACT NOR THE BOARD'S RULES OF PROCEDURE CONTEMPLATE STATEMENT OF OBJECTIONS OR WITHDRAWAL OF MEMBERSHIP EVIDENCE. IT WOULD APPEAR THAT THE REASON THAT THIS IS NOT CONTEMPLATED IS BECAUSE THE EMPLOYEES WILL HAVE AN OPPORTUNITY TO EXPRESS THEMSELVES WITH RESPECT TO REPRESENTATION BY THE APPLICANT UNION BY CASTING THEIR BALLOT IN THE REPRESENTATION VOTE.

10. HOWEVER, IN AN ORDINARY APPLICATION FOR CERTIFICATION WHERE A PRE-HEARING REPRESENTATION VOTE IS NOT REQUESTED, THE BOARD HAS HAD CONSIDERABLE EXPERIENCE WITH STATEMENTS OF DESIRE BY EMPLOYEES THAT THEY DO NOT WISH TO BE REPRESENTED BY A TRADE UNION. THE BOARD'S RULES OF PROCEDURE AND THE NOTICE TO EMPLOYEES OF SUCH AN APPLICATION FOR CERTIFICATION CONTEMPLATE THE FILING OF A STATEMENT OF DESIRE BY EMPLOYEES (SEE SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING (FORM 5)). THE STATEMENT OF DESIRE BY EMPLOYEES OR THE OBJECTION BY EMPLOYEES TO CERTIFICATION TAKES MANY FORMS, THE MOST COMMON OF WHICH USUALLY READS "WE THE UNDERSIGNED EMPLOYEES DO NOT WISH TO BE REPRESENTED BY THE (NAME) TRADE UNION". HOWEVER, IT IS NOT UNCOMMON FOR EMPLOYEES TO USE A FORM OF OBJECTION TO AN APPLICATION FOR CERTIFICATION WHEREIN THEY INDICATE THEY REVOKE THE MEMBERSHIP CARD WHICH THEY HAD SIGNED. WHATEVER THE ACTUAL WORDING USED BY EMPLOYEES, GENERALLY SPEAKING, THE EFFECT IS THE SAME. STATED SIMPLY THE EMPLOYEES DO NOT INTEND THAT THEIR MEMBERSHIP CARD BE USED FOR THE PURPOSE OF PERMITTING THE BOARD TO CERTIFY AN APPLICANT TRADE UNION. WHATEVER FORM THE STATEMENT OF OBJECTIONS TAKES ON AN APPLICATION FOR CERTIFICATION, SO LONG AS THE STATEMENT VOICES OBJECTION TO THE APPLICATION, THE BOARD, IF SATISFIED WITH THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES WERE OBTAINED, TREATS ALL STATEMENTS OF OBJECTION IN THE SAME MANNER WITHOUT REGARD TO THE SPECIFIC WORDS USED. WHERE THERE IS A STATEMENT OF OBJECTIONS FILED, THE BOARD DOES NOT TREAT THE STATEMENT OF OBJECTIONS AS "CANCELLING OUT" THE MEMBERSHIP EVIDENCE. THE BOARD CONTINUES TO BE "SATISFIED" WITH THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AND ACCORDINGLY IS SATISFIED THAT THE EMPLOYEES WERE MEMBERS OF THE APPLICANT UNION. HOWEVER, SINCE THE STATEMENT OF OBJECTIONS HAS CHALLENGED THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT THIS CHALLENGE MUST BE RESOLVED BY THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. IT OFTEN HAPPENS THAT THE STATEMENT OF OBJECTIONS FILED BY EMPLOYEES HAS BEEN SIGNED BY EACH AND EVERY PERSON FOR WHOM AN APPLICANT UNION HAS FILED MEMBERSHIP EVIDENCE. IN SUCH A CIRCUMSTANCE, IT HAS NEVER BEEN THE BOARD'S PRACTICE, NO MATTER WHAT WORDING APPEARS ON THE STATEMENT OF OBJECTION, TO TREAT THE STATEMENT OF OBJECTIONS AS CANCELLING OUT THE MEMBERSHIP EVIDENCE FILED BY AN APPLICANT. THE BOARD RESOLVES THE CHALLENGE TO THE APPLICANT'S EVIDENCE BY REQUIRING THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. IN DIRECTING THE REPRESENTATION VOTE THE BOARD IN SUCH A CASE WOULD STATE THAT "THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE". SUCH A FINDING BY THE BOARD IS INVARIABLY MADE WHERE A REPRESENTATION VOTE IS DIRECTED FOLLOWING THE HEARING OF AN APPLICATION FOR CERTIFICATION NO MATTER HOW MANY EMPLOYEES SIGNED A STATEMENT OF OBJECTIONS TO THE APPLICATION. THE BOARD'S VIEW IS THAT IF THE MAJORITY OF



THE EMPLOYEES APPEAR TO OPPOSE THE APPLICATION THIS CAN BEST BE ASCERTAINED BY THE TAKING OF A SECRET REPRESENTATION VOTE.

11. THE ONLY WAY THE BOARD GIVES EFFECT TO A STATEMENT OF OBJECTIONS TO AN APPLICATION FOR CERTIFICATION IS TO DIRECT THAT THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE BE OBTAINED. SINCE A PRE-HEARING REPRESENTATION VOTE APPLICATION CONTEMPLATES THAT THE CONFIRMATORY EVIDENCE OF A VOTE WILL BE OBTAINED IT IS NOT DEEMED NECESSARY TO INVITE EMPLOYEES TO OBJECT TO THE APPLICATION IN THE NOTICE TO EMPLOYEES OF APPLICATION AND REQUEST FOR PRE-HEARING VOTE (FORM 6) SINCE THEY CAN EXPRESS THEIR OBJECTION AT THE TIME THE VOTE IS TAKEN.

12. FOR THE PURPOSE OF DETERMINING THE EFFECT OF A PETITION, WHETHER IT BE IN THE FORM OF REVOCATION OR WITHDRAWAL OF MEMBERSHIP OR IN SOME OTHER FORM, THE ONLY DIFFERENCE BETWEEN A PRE-HEARING REPRESENTATION VOTE APPLICATION AND AN ORDINARY APPLICATION FOR CERTIFICATION IS THE DATE ON WHICH THE MEMBERSHIP EVIDENCE IS ASSESSED. IN AN ORDINARY APPLICATION FOR CERTIFICATION THE BOARD ASSESSES THE APPLICANT'S MEMBERSHIP AS OF THE TERMINAL DATE. HOWEVER, IN A PRE-HEARING REPRESENTATION VOTE APPLICATION THE BOARD ASSESSES THE APPLICANT'S MEMBERSHIP EVIDENCE AS OF THE DATE THE APPLICATION IS MADE. ACCORDINGLY, EVEN THOUGH THE NOTICES OF WITHDRAWAL OF MEMBERSHIP WERE DELIVERED TO THE APPLICANT PRIOR TO THE DATE OF MAKING THE APPLICATION AND WERE PROPERLY FILED WITH THE BOARD IN THE INSTANT CASE, THERE IS NO REASON WHY THE BOARD SHOULD TREAT SUCH STATEMENTS OF OBJECTION OR WITHDRAWALS OF MEMBERSHIP IN ANY DIFFERENT MANNER THAN THE BOARD WOULD TREAT A STATEMENT OF OBJECTIONS IN AN ORDINARY APPLICATION FOR CERTIFICATION. NOTHING IS CHANGED, IN SO FAR AS THE BOARD'S ASSESSMENT OF THE MEMBERSHIP EVIDENCE IS CONCERNED, BY THE FACT THAT THE APPLICANT MAY HAVE HAD KNOWLEDGE OF THE WITHDRAWALS OF MEMBERSHIP PRIOR TO THE APPLICATION BEING MADE.

13. IT MUST BE REMEMBERED THAT IN ADDITION TO THE SIGNATURE WHICH APPEARS ON AN APPLICATION FOR CERTIFICATION THE BOARD REQUIRES A FINANCIAL SACRIFICE ON THE PART OF A MEMBER. THE ELEMENT OF MONEY PAYMENT IS ABSENT IN THE CASE OF A PETITION, REVOCATION OR WITHDRAWAL OF MEMBERSHIP. THE REPRESENTATION VOTE IN A PETITION CASE IS NOT REQUIRED TO BOLSTER OR ENHANCE THE APPLICANT'S MEMBERSHIP EVIDENCE WHICH IN ITSELF SATISFIES THE BOARD. THE VOTE IS ONLY REQUIRED TO RESOLVE ANY DOUBT CONCERNING THE VALIDITY OF THE CHALLENGE TO THE EVIDENCE OF MEMBERSHIP. IF ON THE TAKING OF THE REPRESENTATION VOTE MORE THAN FIFTY PER CENT OF THOSE ELIGIBLE TO VOTE, VOTE IN FAVOUR OF THE APPLICANT, THE REPRESENTATION VOTE IS CONSIDERED TO BE CONFIRMATORY EVIDENCE OF THE MEMBERSHIP EVIDENCE WHICH HAS BEEN FILED AND THE CHALLENGE TO THE MEMBERSHIP EVIDENCE IS ACCORDINGLY RESOLVED.

14. SINCE A PRE-HEARING REPRESENTATION VOTE HAS BEEN HELD IN THE INSTANT CASE THERE NEED NOT BE ANY INQUIRY INTO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE NOTICES OF WITHDRAWAL OF MEMBERSHIP NOR THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED ON THE NOTICES OF WITHDRAWAL, SINCE THE ONLY EFFECT THAT WOULD BE GIVEN TO SUCH NOTICES OF WITHDRAWAL WOULD BE THE DIRECTION OF A REPRESENTATION VOTE WHICH HAS OCCURRED IN THIS CASE.

15. IT IS READILY APPARENT, THEREFORE, THAT CONSISTENT WITH THE BOARD'S TREATMENT OF STATEMENTS OF OBJECTION TO AN APPLICATION FOR CERTIFICATION BY EMPLOYEES, WHERE A PRE-HEARING REPRESENTATION VOTE IS DIRECTED NO INQUIRY NEED BE MADE INTO THE ORIGINATION, PREPARATION OR CIRCULATION OF SUCH STATEMENTS OF OBJECTION NO MATTER WHAT FORM THEY TAKE.

16. HAVING REGARD TO THE REASONS SET OUT ABOVE, THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

17. THE BOARD, THEREFORE, DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN THE PRE-HEARING REPRESENTATION VOTE TO BE COUNTED AND REPORT TO THE BOARD.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

MARCH 16, 1967.

I DISSENT WITH THE DECISION OF THE MAJORITY CONCERNING THEIR INTERPRETATION OF CERTAIN SPECIFIC SECTIONS OF THE LABOUR RELATIONS ACT. AT THE OUTSET, HOWEVER, I MUST SAY THAT THIS BOARD HAS MADE CERTAIN ASSUMPTIONS FOR THE PURPOSE OF ITS DECISION WHICH HAVE NOT BEEN PROVEN IN EVIDENCE BEFORE US. THESE ASSUMPTIONS AND THE QUESTION WHICH WE ARE TO ANSWER IN ARRIVING AT A DECISION, ARE SET OUT IN PARAGRAPHS 7 AND 8 OF THE MAJORITY DECISION AS FOLLOWS:-

7. THE INTERVENER HAS ALLEGED, AND FOR THE PURPOSE OF DEALING WITH THIS MATTER, THE BOARD HAS ASSUMED (BUT NOT FOUND) THAT THE NOTICES OF WITHDRAWAL OF MEMBERSHIP WERE SERVED ON THE APPLICANT PRIOR TO THE MAKING OF THIS APPLICATION. THE BOARD HAS ALSO ASSUMED (BUT NOT FOUND) THAT EVERYTHING WAS PROPER WITH RESPECT TO THE MANNER IN WHICH THE DOCUMENTS WERE ORIGINATED AND WERE SIGNED.
8. THE QUESTION BEFORE THE BOARD IS, WHAT EFFECT DO WRITTEN NOTICES OF WITHDRAWAL OF MEMBERSHIP HAVE ON AN APPLICANT'S MEMBERSHIP EVIDENCE WHEN THE NOTICES OF WITHDRAWAL ARE SERVED ON AN APPLICANT PRIOR TO MAKING OF A PRE-HEARING REPRESENTATION VOTE APPLICATION.

THE INTERVENER ALLEGES, (AND WE ARE ASSUMING FOR THE PURPOSES OF THIS DECISION,) THAT PRIOR TO THE DATE OF THE APPLICATION, IT SERVED UPON THE APPLICANT SEVENTY-SIX NOTICES OF WITHDRAWAL OF MEMBERSHIP FROM THE APPLICANT, SET OUT IN THE FOLLOWING LANGUAGE:-

TO: UNITED TEXTILE WORKERS UNION OF AMERICA

DEAR SIRs,

THIS IS TO NOTIFY YOU THAT I WISH TO WITHDRAW FROM MEMBERSHIP IN YOUR UNION. ALSO YOU ARE TO

TAKE THIS AS NOTICE, THAT UNDER NO CIRCUMSTANCE IS MY NAME OR MEMBERSHIP CARD TO BE USED BY YOUR ORGANIZATION IN REGARDS TO REPRESENTATION IN MY EMPLOYMENT WITH CALDWELL LINEN MILLS LIMITED, IROQUOIS, ONTARIO.

IF THE NOTICES OF WITHDRAWAL OF MEMBERSHIP WERE EXECUTED SUBSEQUENT TO THE APPLICANT'S MEMBERSHIP DOCUMENTS AND IF THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT FOR PERSONS WHO ALSO SIGNED SUCH NOTICES OF WITHDRAWAL WERE NOT COUNTED, THE APPLICANT WOULD NOT HAVE FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT AS MEMBERS IN THE BARGAINING UNIT.

IN THE INSTANT CASE, THE BOARD HAD EARLIER DIRECTED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES IN THE VOTING CONSTITUENCY UNDER THE TERMS OF SECTION 8(2) OF THE ACT, AND HAD DIRECTED THAT THE BALLOT BOX CONTAINING THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED AND NOT COUNTED IN ORDER THAT THE RESPECTIVE PARTIES MIGHT BE GIVEN FULL OPPORTUNITY TO PRESENT THEIR EVIDENCE AND MAKE THEIR SUBMISSIONS.

AT THE HEARING DIRECTED BY THE BOARD TO HEAR THE REPRESENTATIONS OF THE RESPECTIVE PARTIES, COUNSEL FOR THE INTERVENER URGED UPON US A STRICT INTERPRETATION OF THE WORDING OF SECTIONS 7(2) AND 8(4) OF THE ACT AND SUBMITTED THAT BECAUSE OF THE NECESSITY BY THE APPLICANT TO SATISFY THE BOARD THAT IT HAD AS MEMBERS NOT LESS THAN 45 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, AND BECAUSE THE WITHDRAWAL OF MEMBERSHIP FROM THE APPLICANT WOULD REDUCE ITS MEMBERSHIP BELOW 45 PER CENT, THE APPLICATION OF THE APPLICANT SHOULD BE DISMISSED.

SECTION 8(4) OF THE LABOUR RELATIONS ACT SAYS AS FOLLOWS:-

AFTER A REPRESENTATION VOTE HAS BEEN TAKEN UNDER SUBSECTION 2, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING AND, IF IT IS SATISFIED THAT NOT LESS THAN 45 PER CENT OF THE EMPLOYEES IN SUCH BARGAINING UNIT WERE MEMBERS OF THE TRADE UNION AT THE TIME THE APPLICATION WAS MADE, THE REPRESENTATION VOTE TAKEN UNDER SUBSECTION 2 HAS THE SAME EFFECT AS A REPRESENTATION VOTE TAKEN UNDER SUBSECTION 2 OF SECTION 7.

SECTION 7(2) OF THE LABOUR RELATIONS ACT SAYS AS FOLLOWS:-

IF THE BOARD IS SATISFIED THAT NOT LESS THAN 45 PER CENT AND NOT MORE THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL, AND IF THE BOARD IS SATISFIED THAT MORE THAN 55 PER CENT OF SUCH EMPLOYEES ARE MEMBERS OF THE TRADE UNION, THE BOARD MAY DIRECT THAT A REPRESENTATION VOTE BE TAKEN.

MY COLLEAGUES IN THEIR MAJORITY DECISION HAVE INDICATED THAT THE CONDITION PRECEDENT IN SECTION 8(4) OF THE ACT HAS BEEN MET BY THE APPLICANT, I.E., THEY ARE "SATISFIED THAT NOT LESS THAN 45 PER CENT OF THE EMPLOYEES IN SUCH BARGAINING UNIT WERE MEMBERS OF THE TRADE UNION AT THE TIME THE APPLICATION WAS MADE", AND THAT ANY CHALLENGE TO THE APPLICANT'S EVIDENCE OF MEMBERSHIP WOULD BE RESOLVED BY THE REPRESENTATION VOTE WHICH THEY SUGGEST IS CONFIRMATORY EVIDENCE OF THE MEMBERSHIP EVIDENCE.

WITH THE GREATEST OF RESPECT, I AM UNABLE TO SEE HOW A VOTE IS CONFIRMATORY OF ANYTHING EXCEPT THE WISHES OF THE VOTERS AT THE IMMEDIATE TIME THAT THEY CAST THEIR BALLOTS. INDEED, THE VOTERS CASTING THEIR BALLOTS ON A REPRESENTATION VOTE MAY BE PERSONS WHO HAVE INITIALLY NEITHER JOINED THE APPLICANT NOR THE INTERVENER, OR THEIR BALLOTS MAY BE CAST IN A DIRECTION DIAMETRICALLY OPPOSED TO THEIR ORIGINAL APPLICATIONS FOR MEMBERSHIP BEFORE THE VOTE WAS HELD.

ACCORDINGLY, IN VIEW OF THE UNEQUIVOCAL LANGUAGE USED BY THE SEVENTY-SIX PERSONS WHO REVOKED THEIR MEMBERSHIP IN THE APPLICANT UNION, I AM UNABLE TO SAY THAT THE APPLICANT UNION HAS SATISFIED THE CONDITION PRECEDENT CONTAINED IN SECTION 8(4) OF THE ACT. I AM NOT "SATISFIED THAT NOT LESS THAN 45 PER CENT OF THE EMPLOYEES IN SUCH BARGAINING UNIT WERE MEMBERS OF THE TRADE UNION AT THE TIME THE APPLICATION WAS MADE."

THAT BEING SO, I WOULD HAVE DIRECTED AN INQUIRY INTO THE ORIGINATION, PREPARATION OR CIRCULATION OF THE NOTICES OF WITHDRAWAL OF MEMBERSHIP.

WHILE MY DISSENT REFLECTS MY INTERPRETATION OF THE RELEVANT SECTIONS OF THE LABOUR RELATIONS ACT, I AM FULLY COGNIZANT OF THE FACT THAT MY COLLEAGUES' DECISION INDICATES THE POLICY OF THE BOARD IN DEALING WITH STATEMENTS OF OBJECTION TO DATE.

12554-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. POWER CONTROLS DIVISION - MIDLAND-ROSS OF CANADA LIMITED (RESPONDENT) V. THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 568 (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: T. ARMSTRONG, R. WHITE AND C. ANDERSON FOR THE APPLICANT, F. E. OHL AND J. H. PARWIS FOR THE RESPONDENT, S. SIMPSON AND R. S. TAYLOR FOR THE INTERVENER.

DECISION OF THE BOARD: MARCH 22, 1967.

1. THE APPLICANT APPLIES FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT AT BURLINGTON. THE RESPONDENT AND THE INTERVENER SEEK TO ESTABLISH AS A BAR TO THIS APPLICATION THAT THERE IS A COLLECTIVE AGREEMENT IN EFFECT COVERING THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION.



2. ON JUNE 29RD, 1966, THE INTERVENER WAS CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT AT HAMILTON. AT THAT TIME, THE RESPONDENT WAS CARRYING ON BUSINESS IN RENTED PREMISES AT HAMILTON AND WAS ENGAGED IN THE CONSTRUCTION OF PREMISES AT BURLINGTON TO WHICH IT PLANNED TO MOVE ITS OPERATIONS. AT THE TIME OF CERTIFICATION, HOWEVER, THERE WERE EMPLOYEES AT BURLINGTON AND THE BOARD, FOLLOWING ITS USUAL PRACTICE, ISSUED ITS CERTIFICATE WITH RESPECT TO EMPLOYEES AT HAMILTON ONLY.

3. FOLLOWING CERTIFICATION, THE INTERVENER AND THE RESPONDENT NEGOTIATED A COLLECTIVE AGREEMENT WHICH BECAME EFFECTIVE ON SEPTEMBER 12TH, 1966 AND WAS TO REMAIN IN EFFECT UNTIL MARCH 11TH, 1968. THE RECOGNITION CLAUSE IN THAT AGREEMENT IS AS FOLLOWS:

1. THE COMPANY RECOGNIZES THE UNION AND THE COMPANY AS PARTIES TO THIS AGREEMENT AND THAT THE UNION IS THE EXCLUSIVE BARGAINING AGENT OF THE EMPLOYEES IN THE UNIT DEFINED HEREIN.

2. THE COMPANY RECOGNIZES THE UNION AS THE COLLECTIVE BARGAINING AGENT FOR ALL EMPLOYEES AT ITS POWER CONTROLS DIVISION AT ITS HAMILTON AND BURLINGTON PLANTS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, FACTORY CLERICAL, OFFICE AND SALES STAFF, TECHNICIANS, AND PLANT GUARDS.

AT THE TIME THE AGREEMENT WAS ENTERED INTO THE RESPONDENT HAD NO EMPLOYEES AT BURLINGTON. AT ABOUT THE MIDDLE OF DECEMBER 1966, OPERATIONS BEGAN AT BURLINGTON AND EMPLOYEES WERE GRADUALLY TRANSFERRED THERE. AT THE TIME OF THE HEARING ALL OF THE RESPONDENT'S EMPLOYEES WERE AT BURLINGTON AND NONE WERE AT HAMILTON.

4. THE BARGAINING RIGHTS OF THE INTERVENER FOR EMPLOYEES OF THE RESPONDENT AT BURLINGTON ARE THUS BASED UPON VOLUNTARY RECOGNITION, RATHER THAN UPON THE BOARD'S CERTIFICATE. SINCE THIS IS THE FIRST OF THE COLLECTIVE AGREEMENT BY WHICH THE INTERVENER IS RECOGNIZED AS BARGAINING AGENT FOR EMPLOYEES AT BURLINGTON, IT WOULD APPEAR THAT ON AN APPLICATION MADE UNDER SECTION 45A OF THE LABOUR RELATIONS ACT THE ONUS OF ESTABLISHING THAT THE INTERVENER WAS ENTITLED TO REPRESENT EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO WOULD REST ON THE PARTIES TO THE AGREEMENT. AT THE HEARING IN THIS MATTER, BOTH THE INTERVENER AND THE RESPONDENT CALLED EVIDENCE RELATING TO THE CIRCUMSTANCES SURROUNDING THE MAKING OF THE AGREEMENT AND AS TO THE INTERVENER'S REPRESENTATION OF EMPLOYEES.

5. AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO THERE WERE SIXTEEN EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT HAMILTON. THERE IS NO QUESTION OF THE INTERVENER'S BARGAINING RIGHTS WITH RESPECT TO THESE EMPLOYEES; THESE BARGAINING RIGHTS FLOWED FROM THE BOARD'S CERTIFICATE. THERE WERE NO EMPLOYEES AT BURLINGTON AT THAT TIME. OF THE SIXTEEN PERSONS IN THE BARGAINING UNIT, FIFTEEN ATTENDED A RATIFICATION MEETING CALLED BY THE INTERVENER AND FOURTEEN OF THESE PARTICIPATED IN A RATIFICATION VOTE. THE AGREEMENT WAS RATIFIED BY A MAJORITY OF THOSE VOTING CONSTITUTING FIFTY PER CENT OF THE PERSONS IN THE BARGAINING UNIT.

6. AT THE TIME OF THE MOVE OF THE RESPONDENT'S OPERATIONS TO BURLINGTON, THERE WERE TWENTY-TWO EMPLOYEES IN THE BARGAINING UNIT. EACH OF THESE HAD BEEN TOLD AT THE TIME HE WAS HIRED THAT HE WOULD BE TRANSFERRED TO BURLINGTON WHEN THE COMPANY'S OPERATIONS WERE MOVED THERE. THE NEGOTIATIONS BETWEEN THE INTERVENER AND THE RESPONDENT CONTEMPLATED THE MOVE OF THE RESPONDENT'S OPERATIONS FROM HAMILTON TO BURLINGTON, AND THE COLLECTIVE AGREEMENT CONTAINED CERTAIN TERMS WHICH WOULD BE APPLICABLE ONLY TO THE BURLINGTON OPERATIONS. BURLINGTON IS A MUNICIPALITY ADJACENT TO HAMILTON.

7. WHEN THE BURLINGTON PLANT WAS READY FOR OCCUPANCY, THE COMPANY BEGAN TO MOVE EMPLOYEES FROM HAMILTON TO BURLINGTON AND BY THE TIME OF THE HEARING, THE MOVE WAS COMPLETED. NO EMPLOYEE WAS DISPLACED FROM HIS EMPLOYMENT AS A RESULT OF THE MOVE. AT THE TIME OF THE HEARING THERE WERE TWENTY-TWO EMPLOYEES IN THE BARGAINING UNIT AT BURLINGTON AND IT APPEARS THAT VIRTUALLY ALL OF THESE HAD BEEN EMPLOYED AT HAMILTON. CERTAIN OTHERS HAVE BEEN HIRED BY THE RESPONDENT SINCE IT MOVED TO BURLINGTON.

8. HAVING REGARD TO THESE CIRCUMSTANCES, WE CONCLUDE THAT THERE WAS NOTHING IMPROPER IN THE AGREEMENT OF THE PARTIES TO EXPAND THE BARGAINING UNIT SO AS TO CONTINUE THE INTERVENER'S BARGAINING RIGHTS FOLLOWING THE MOVE OF THE RESPONDENT'S OPERATIONS. IT MAY BE THAT IN OTHER CIRCUMSTANCES SUCH AN AGREEMENT MIGHT BE IMPROPER, BUT IN THE INSTANT CASE WHERE A BODY OF EMPLOYEES WAS TRANSFERRED FROM ONE MUNICIPALITY TO AN ADJOINING ONE, WE CANNOT GIVE EFFECT TO THE APPLICANT'S OBJECTION ON THIS GROUND.

9. IT WAS FURTHER ARGUED BY THE APPLICANT THAT THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT OUGHT NOT TO BE A BAR TO THE APPLICATION BECAUSE AT THE TIME THE AGREEMENT WAS ENTERED INTO THE INTERVENER DID NOT REPRESENT A SUFFICIENT PROPORTION OF THE WORKING FORCE WHICH WOULD ULTIMATELY BE EMPLOYED IN THE BARGAINING UNIT; THAT IS, IT WAS THE APPLICANT'S CONTENTION THAT THE COLLECTIVE AGREEMENT IN SO FAR AS IT AFFECTED EMPLOYEES OF THE RESPONDENT AT BURLINGTON, WAS PREMATURE AND THE APPLICANT RELIED ON THE ANALOGY OF THE BOARD'S PRACTICE IN CERTIFICATION APPLICATIONS WHERE IT IS ESTABLISHED THAT A "BUILD-UP" OF AN EMPLOYER'S WORK FORCE WILL TAKE PLACE.

10. THE EVIDENCE IN THIS REGARD DID ESTABLISH THAT A SUBSTANTIAL BUILD-UP OF THE RESPONDENT'S WORK FORCE IS CONTEMPLATED. THE EVIDENCE DOES NOT, HOWEVER, ESTABLISH THE EXISTENCE OF ANY FIRM PLANS OR SCHEDULE FOR HIRING EITHER AS OF THE DATE OF THE HEARING OR AS OF THE DATE WHEN THE COLLECTIVE AGREEMENT WENT INTO EFFECT. THE BOARD HAS ALWAYS REQUIRED CLEAR EVIDENCE OF FIRM PLANS FOR THE BUILD-UP OF THE WORK FORCE AS A SUFFICIENT REASON FOR DELAY IN THE GRANTING OF BARGAINING RIGHTS.

11. FOLLOWING THE HEARING, THE APPLICANT MADE THE ALLEGATION THAT THE RESPONDENT HAD INCREASED ITS WORK FORCE AND SUBMITTED THAT THIS WAS CORROBORATION OF THE EVIDENCE GIVEN AT THE HEARING WITH RESPECT TO THE BUILD-UP OF THE RESPONDENT'S WORK FORCE AND THAT IT WAS CONTRADICTORY OF THE EVIDENCE GIVEN AT THE HEARING ON BEHALF OF THE RESPONDENT AND THE INTERVENER. IT IS SUFFICIENT TO SAY THAT THE MATTER IN ISSUE IS THE SUFFICIENCY OF THE INTERVENER'S REPRESENTATION OF EMPLOYEES OF THE RESPONDENT AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO OR AT THE LATEST AT THE TIME THE AGREEMENT BECAME EFFECTIVE WITH RESPECT TO EMPLOYEES AT BURLINGTON. THE BOARD WOULD BE CONCERNED WITH THE EXISTENCE OF FIRM PLANS FOR A BUILD-UP OF THE

RESPONDENT'S WORK FORCE IN SO FAR AS SUCH PLANS EXISTED AT THOSE TIMES. WHETHER OR NOT THE WORK FORCE HAS INCREASED SINCE THE TIME OF THE HEARING WOULD NOT BE RELEVANT TO THE QUESTIONS BEFORE THE BOARD.

12. ON ALL OF THE EVIDENCE, IT IS OUR CONCLUSION THAT THE INTERVENER DID AT THE MATERIAL TIMES REPRESENT THE EMPLOYEES OF THE RESPONDENT AND THAT THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE INTERVENER AND THE RESPONDENT COVERING THE EMPLOYEES AFFECTED BY THIS APPLICATION. THE COLLECTIVE AGREEMENT DOES NOT EXPIRE UNTIL MARCH 11TH, 1968. THE INSTANT APPLICATION IS THEREFORE UNTIMELY BY VIRTUE OF THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT.

13. THE APPLICATION IS ACCORDINGLY DISMISSED.

12565-66-P: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT)  
V. HIGH SCHOOL BOARD OF EASTVIEW (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. H. PARKER FOR THE APPLICANT, P. GENEST AND  
H. RENAUD FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN FOR THE MAJORITY, AND  
DISSENTING DECISION OF BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON:

MARCH 1, 1967.

. . .

3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR AN INDUSTRIAL TYPE "ALL EMPLOYEE" UNIT OF EMPLOYEES OF THE RESPONDENT. THE RESPONDENT QUESTIONS THE RIGHT OF THE APPLICANT AS A CRAFT UNION TO BE CERTIFIED AS BARGAINING AGENT FOR EMPLOYEES OTHER THAN OPERATING ENGINEERS. THE APPLICANT SUBMITS THAT UNDER THE JURISDICTIONAL PROVISIONS OF THE APPLICANT'S CONSTITUTION ALL CATEGORIES OF PERSONS IN THE PROPOSED BARGAINING UNIT ARE ELIGIBLE FOR MEMBERSHIP IN THE APPLICANT TRADE UNION AND THE APPLICANT, IN FACT, HAS TAKEN THEM INTO MEMBERSHIP.

4. IN INTERPRETING UNION CONSTITUTIONS, FOR THE PURPOSE OF DETERMINING THE ELIGIBILITY FOR MEMBERSHIP OF PERSONS IN A PROPOSED BARGAINING UNIT, THE BOARD HAS FOLLOWED THE PRINCIPLE SET OUT IN THE JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564 AT 568:

IN CONSTRUING CONSTITUTIONS OF TRADE UNIONS,  
IT MUST BE THE UNDERSTANDING OF A LAYMAN  
RATHER THAN A TECHNICAL INTERPRETATION OF THE  
WORDS THAT MUST GOVERN. WHAT WE HAVE TO ARRIVE  
AT IN THIS CASE IS THE INTENTION OF THE  
MEMBERS WITHIN THE INTERNATIONAL  
UNION OF THE MEMBERSHIP  
ARTICLE OF THE CONSTITUTION.

5. IT IS A MATTER OF RECORD THAT THE BOARD, IN NOT AN INCONSIDERABLE NUMBER OF CASES, HAS CERTIFIED THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND LOCALS OF THE INTERNATIONAL AS BARGAINING AGENTS FOR "ALL EMPLOYEE" UNITS COVERING PERSONS EMPLOYED IN WIDELY DIVERSIFIED OCCUPATIONAL OCCUPATIONS, INCLUDING THOSE IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT. IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, WE CAN ONLY CONCLUDE THAT THE RESPONSIBLE OFFICIALS OF THE APPLICANT HAVE PLACED AN INTERPRETATION ON THE JURISDICTIONAL PROVISIONS OF ITS CONSTITUTION WHICH IS BROAD ENOUGH TO MAKE ALL OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, WHICH THE APPLICANT IS SEEKING, ELIGIBLE FOR MEMBERSHIP.

6. THE QUESTION OF THE JURISDICTION OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS TO REPRESENT INDUSTRIAL-TYPE UNITS OF EMPLOYEES WAS RAISED IN THE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126. AFTER CONSIDERING THE RELEVANT ARTICLES OF THE UNION'S CONSTITUTION THE BOARD STATED THAT "THE LANGUAGE OF THE CONSTITUTION DOES IN TERMS PURPORT TO EXCLUDE FROM MEMBERSHIP EMPLOYEES IN THE PROPOSED BARGAINING UNIT" AND FOUND THAT THE UNION CONSTITUTION OPERATED TO EXCLUDE PERSONS IN THE PROPOSED BARGAINING UNIT FROM MEMBERSHIP. THE BOARD CLEARLY INDICATED, HOWEVER, THAT IT ARRIVED AT THIS CONCLUSION IN THE ABSENCE OF EVIDENCE OF ANY PRACTICE THAT THE UNION HAD IN THE PAST ADMITTED OR ACCORDING TO ITS RESPONSIBLE OFFICERS, COULD ADMIT SUCH PERSONS TO MEMBERSHIP. IN THE SUBSEQUENT ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 170, WHICH WAS AN APPLICATION FOR CERTIFICATION BY A LOCAL OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, THE JURISDICTION OF THE UNION TO REPRESENT AN "ALL EMPLOYEE" UNIT WAS AGAIN CHALLENGED. THE BOARD HELD THAT THERE DID NOT APPEAR TO BE ANY EXPRESS EXCLUSION OF ANY OF THE CLASSIFICATIONS AFFECTED BY THE APPLICATION FROM THE JURISDICTION OF THE UNION. THE BOARD IN THAT CASE DISTINGUISHED THE CANADIAN CANNERS LIMITED CASE (SUPRA) ON THE GROUNDS THAT THE UNIT OF EMPLOYEES IN THE LATTER CASE WAS QUITE DIFFERENT AND THAT IT HAD NOT BEEN SHOWN THAT THE LANGUAGE OF THE CONSTITUTION EXCLUDED THE EMPLOYEES IN THE BARGAINING UNIT BEFORE IT. IF IT CAN BE SAID THAT THERE IS A CONFLICT ON THE FACE OF THE ABOVE CITED DECISIONS, WE WOULD ONLY COMMENT THAT THE ALDERSHOT DECISION IS MORE IN ACCORD WITH THE BOARD'S PRACTICE IN INTERPRETING UNION CONSTITUTIONS (SEE N. D. APPELGADE LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, P. 104, AND WAYNE PUMP CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 489).

7. IN THE INSTANT CASE, HOWEVER, THE BOARD DOES NOT RELY SOLELY ON THE LANGUAGE OF THE CONSTITUTION. IN LIGHT OF THE RECORD OF ORGANIZING PRACTICES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND AT LEAST SOME OF ITS LOCAL UNIONS, ALL OF WHOM, INCLUDING THE APPLICANT IN THIS CASE, DERIVE THEIR JURISDICTION FROM THE CONSTITUTION OF THE INTERNATIONAL, THE BOARD FINDS THAT THE EMPLOYEES IN THE PROPOSED UNIT ARE ELIGIBLE FOR MEMBERSHIP IN THE APPLICANT. THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS JURISDICTION TO REPRESENT THE EMPLOYEES IN THE UNIT WHICH IT IS SEEKING.

8. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE BUSINESS ADMINISTRATOR, THE MANAGER OF THE CAFETERIA, OFFICE STAFF, PROFESSIONAL TEACHING STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.



9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER P. J. O'KEEFE: MARCH 1, 1967.

ALTHOUGH I ASSOCIATE MYSELF WITH THE MAJORITY DECISION, IN MY OPINION, IT IS INCONSISTENT FOR THE APPLICANT TO CLAIM TO REPRESENT BOTH CRAFT AND INDUSTRIAL TYPE UNITS. BY ACQUIRING BARGAINING RIGHTS FOR AN INDUSTRIAL TYPE UNIT IN THE INSTANT CASE, IN MY VIEW, IT MAY BE THAT THE STATUS OF THE APPLICANT AS A CRAFT TRADE UNION IS NOW OPEN TO QUESTION.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: MARCH 1, 1967.

I DISSENT INsofar AS THE MAJORITY HAS ALLOWED THIS APPLICANT TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN CLASSIFICATIONS IN THE INDUSTRIAL TYPE "ALL EMPLOYEE" UNIT OF EMPLOYEES OF THE RESPONDENT.

THE UNIT WHICH THE APPLICANT SEEKS TO HAVE CERTIFIED IS COMPRISED OF A GROUP OF TWO, 4TH CLASS STATIONARY ENGINEERS AND TEN CLEANERS.

THE QUESTION AS TO WHETHER OR NOT THE CLEANERS COULD PROPERLY BE INCLUDED UNDER THE APPLICANT'S CONSTITUTION WAS ARGUED BEFORE THE BOARD BY THE RESPONDENT.

ARTICLE X OF THE APPLICANT'S CONSTITUTION RECITES, INTER ALIA:-

#### MEMBERSHIP

#### QUALIFICATIONS

ANY ENGINEER ENGAGED IN THE CRAFT OVER WHICH THIS ORGANIZATION EXERCISES CRAFT JURISDICTION, OR OTHER PERSON WHO MAY QUALIFY TO BECOME A JUNIOR ENGINEER, ASSISTANT ENGINEER, OR REGISTERED APPRENTICE ENGINEER THEREIN, AND ANY OTHER ENGINEER ENGAGED AS AN INSPECTOR OF BOILERS OR OTHER MACHINERY OR AS AN EXAMINER OF ENGINEERS, MAY UPON APPLICATION, ELECTION AND INITIATION IN THE MANNER AND FORM REQUIRED IN THIS CONSTITUTION, BECOME A MEMBER OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS. NO PERSON WHO IS OTHERWISE ELIGIBLE UNDER THE QUALIFICATIONS FIXED HEREIN, BUT WHO IS OPPOSED TO ORGANIZED LABOR, SHALL BE ADMITTED TO MEMBERSHIP.

IF THE FOREGOING EXCERPT FROM THE APPLICANT'S CONSTITUTION CORRECTLY SETS OUT ITS QUALIFICATIONS FOR MEMBERSHIP, I AM UNABLE TO SEE HOW THE CLEANERS WHICH THE APPLICANT SEEKS TO REPRESENT, CAN QUALIFY FOR MEMBERSHIP IN THE APPLICANT UNION.

NOR DO SOME OF THE EARLIER PRONOUNCEMENTS OF THIS BOARD WITH RESPECT

TO THE INTERPRETATION OF CONSTITUTIONS ASSIST ME IN ENABLING THESE CLEANERS TO BE INCLUDED UNDER THE APPLICANT'S CONSTITUTION.

THE MAJORITY OF THIS BOARD HAS CITED THE PRINCIPLE SET OUT IN THE JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564 AT 568:

IN CONSTRUING CONSTITUTIONS OF TRADE UNIONS, IT MUST BE THE UNDERSTANDING OF A LAYMAN RATHER THAN A TECHNICAL INTERPRETATION OF THE WORDS THAT MUST GOVERN.

I WOULD SUGGEST THAT IN CONSTRUING ARTICLE X, MEMBERSHIP-- QUALIFICATIONS, THE UNDERSTANDING OF A LAYMAN WOULD BE THAT PERSONS SUCH AS CLEANERS WOULD BE INELIGIBLE FOR MEMBERSHIP IN SUCH UNION.

IT IS MY UNDERSTANDING THAT THE QUESTION OF THE RIGHT OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS TO REPRESENT CERTAIN CLASSIFICATIONS OF EMPLOYEES IN INDUSTRIAL-TYPE UNITS UNDER ITS CONSTITUTION HAS BEEN ARGUED PREVIOUSLY IN ONLY 2 OTHER CASES BEFORE THIS BOARD, THE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126 AND ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 170.

IN THE ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, SUPRA, THE RESPONDENT WAS ENGAGED IN THE BUSINESS OF RENTAL AND OPERATION OF CONSTRUCTION EQUIPMENT AND THE EMPLOYEES AFFECTED BY THAT APPLICATION WERE ENGAGED IN A VARIETY OF TASKS ANCILLARY TO THOSE OPERATIONS. THE BOARD, IN DISTINGUISHING THE DECISION IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, SAID:-

IT WILL BE SEEN THAT THE CIRCUMSTANCES OF THIS CASE ARE QUITE DIFFERENT FROM THOSE IN THE CANADIAN CANNERS LIMITED CASE, WHERE THE BOARD FOUND IN AN APPLICATION FOR CERTIFICATION FOR A UNIT OF EMPLOYEES QUITE UNLIKE THAT IN THE PRESENT CASE, THAT 'THE LANGUAGE OF THE CONSTITUTION DOES IN TERMS PURPORT TO EXCLUDE FROM MEMBERSHIP EMPLOYEES IN THE PROPOSED BARGAINING UNIT'. IT HAS NOT BEEN SHOWN THAT SUCH A PROPOSITION APPLIES WITH RESPECT TO EMPLOYEES IN THE BARGAINING UNIT PROPOSED IN THIS CASE. THE DECISION IN THIS CASE, HOWEVER, SHOULD NOT BE CONSTRUED AS INVOLVING ANY FINDING THAT THE APPLICANT HAS REGULARLY TAKEN INTO MEMBERSHIP PERSONS EXCLUDED THEREFROM BY THE EXPRESS LANGUAGE OF ITS CONSTITUTION.

IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, THE BOARD CONSIDERED THE VERY PORTIONS OF THE CONSTITUTION OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, AS WE ARE CONSIDERING IN THE INSTANT CASE.

THE BOARD IN THAT CASE SAID:-

5. IN OUR OPINION, ARRIVED AT AFTER CAREFUL CONSIDERATION OF ALL OF ITS RELEVANT ARTICLES, THE LANGUAGE OF THE CONSTITUTION DOES IN TERMS PURPORT TO EXCLUDE FROM MEMBERSHIP EMPLOYEES IN THE PROPOSED BARGAINING UNIT. IN THE ABSENCE OF ANY PROOF OF UNEQUIVOCAL PRACTICE OR OTHER SATISFACTORY EVIDENCE TO THE CONTRARY, WE ARE COMPELLED TO FIND, ON THE CASE AS PRESENTED TO US, THAT THE RESTRICTIONS EMBODIED IN THE UNION'S CONSTITUTION MEAN WHAT THEY SAY AND DO IN FACT OPERATE TO EXCLUDE PERSONS IN THE PROPOSED UNIT FROM MEMBERSHIP. (THE UNDERLINING IS MINE)

6. HAVING REGARD TO THE PRINCIPLES IN GAYMER AND OULTRAM CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER ¶17,073, C.L.S. 76-429; THE OTTAWA CITIZEN CASE, C.C.H. IBID, ¶17,076, C.L.S. 76-431; JOHN E. RIDDELL AND SON LTD., N. D. APPELATE LTD., BOARD FILE 5282-62-R, AND GREAT LAKES OVERSEAS PACKING CO., BOARD FILE 9790-64-R, THE APPLICANT DOES NOT, THEREFORE QUALIFY TO BE CERTIFIED AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES WHICH IT SEEKS IN THE PRESENT CASE.

IN THE INSTANT CASE, NO EVIDENCE OF ANY KIND WAS PRESENTED TO US BY THE APPLICANT INDICATING A PRACTICE BY THIS UNION OF ACCEPTING PERSONS OF THE CLASSES IN THIS UNIT AS MEMBERS, NOR INDEED, WAS ANY EVIDENCE PRESENTED BY THIS APPLICANT WITH RESPECT TO THIS ISSUE WHATSOEVER.

ACCORDINGLY, IN THE ABSENCE OF ANY PROOF OF UNEQUIVOCAL PRACTICE OR OTHER SATISFACTORY EVIDENCE TO THE CONTRARY, I AM COMPELLED TO FIND, ON THE CASE AS PRESENTED TO US, THAT THE RESTRICTIONS EMBODIED IN THE UNION'S CONSTITUTION MEAN WHAT THEY SAY AND DO IN FACT OPERATE TO EXCLUDE PERSONS IN THE PROPOSED UNIT FROM MEMBERSHIP (WITH THE EXCEPTION OF THE TWO, 4TH CLASS ENGINEERS).

I MIGHT ALSO ADD THAT IN A RECENT DECISION OF THIS BOARD IN BROCKVILLE GENERAL HOSPITAL, BOARD FILE #11456-65-R, THE BOARD, IN CONSIDERING AN APPROPRIATE BARGAINING UNIT, SAID, AT PAGE 3 OF ITS DECISION:- "HAD THE APPLICANT SOUGHT A BARGAINING UNIT INCLUDING 'TECHNICIANS' AND HAD THE MEMBERSHIP PROVISION OF THE APPLICANT'S CONSTITUTION BEEN WIDE ENOUGH TO ALLOW FOR ADMISSION TO MEMBERSHIP OF SUCH 'TECHNICIANS', ANOTHER RESULT MIGHT CONCEIVABLY HAVE FOLLOWED ..."

I MAKE NO FINDING WHATEVER AS TO WHETHER OR NOT A UNION, RECOGNIZED TO BE A CRAFT UNION, LOSES THIS RECOGNITION SUBSEQUENTLY, BY APPLYING FOR INDUSTRIAL TYPE ALL-EMPLOYEE UNITS OF EMPLOYEES.

T2656-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD

OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT)  
V. SILVERWOOD DAIRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. J. THOMSON, S. MILLAR AND S. POWERS  
FOR THE APPLICANT, J. A. HOUSTON AND J. R. HURL FOR THE RESPONDENT,  
NO ONE FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE: MARCH 2, 1967.

. . .

3. ONE OF THE EXCLUSIONS FROM THE BARGAINING UNIT SUGGESTED BY THE RESPONDENT IS "PERSONS EMPLOYED FOR VACATION PERIODS, RELIEF OR SEASONAL WORK". THE APPLICANT SUBMITS THAT THE ABOVE SUGGESTED EXCLUSION FROM THE BARGAINING UNIT IS NOT IN ACCORD WITH THE SCOPE OF THE BARGAINING UNITS CONTAINED IN MOST OF THE CURRENT COLLECTIVE AGREEMENTS BETWEEN THE APPLICANT AND THE RESPONDENT. IN SUPPORT OF ITS SUBMISSION THE APPLICANT FILED A NUMBER OF COLLECTIVE AGREEMENTS WHICH IT HAS ENTERED INTO WITH THE RESPONDENT IN ADDITION TO COLLECTIVE AGREEMENTS BETWEEN ITSELF AND OTHER DAIRY COMPANIES.

4. OVER THE PAST DECADE THE BOARD IN CERTIFYING EMPLOYEES OF THE RESPONDENT, WITH FEW EXCEPTIONS, HAS EXCLUDED FROM THE BARGAINING UNIT THE CLASSIFICATIONS OF PERSONS SUGGESTED BY THE RESPONDENT ABOVE. THIS EXCLUSION, HOWEVER, HAS NEVER BEEN EXTENDED TO OTHER DAIRY COMPANIES. THE BOARD ORIGINALLY MADE THE EXCLUSION OF "PERSONS EMPLOYED FOR VACATION PERIODS, RELIEF OR SEASONAL WORK" BECAUSE OF A HISTORY OF THIS DESIGNATED GROUP OF EMPLOYEES BEING EXCLUDED FROM THE COVERAGE OF THE RESPONDENT'S COLLECTIVE AGREEMENTS WITH THE APPLICANT AND OTHER TRADE UNIONS.

5. AN EXAMINATION OF BOTH THE CURRENT COLLECTIVE AGREEMENTS ENTERED INTO BY THE APPLICANT AND THE RESPONDENT WHICH WERE FILED BY THE APPLICANT IN THE INSTANT CASE AND THOSE THAT ARE ON FILE WITH THE BOARD REVEAL THAT ONLY A MINORITY OF THESE AGREEMENTS EXCLUDE FROM THE SCOPE OF THE BARGAINING UNIT "PERSONS EMPLOYED FOR VACATION PERIODS, RELIEF OR SEASONAL WORK".

6. IN LIGHT OF THE EVIDENCE OF WHAT APPEARS TO BE THE CURRENT COLLECTIVE BARGAINING PRACTICE THAT EXISTS BETWEEN THE APPLICANT AND THE RESPONDENT, THE BOARD IS OF THE OPINION THAT THERE IS NO LONGER A VALID REASON FOR THE BOARD TO CONTINUE TO MAKE A SPECIAL EXCLUSION FROM UNITS OF EMPLOYEES OF THE RESPONDENT FOR THAT GROUP OF EMPLOYEES DESCRIBED AS "PERSONS EMPLOYED FOR VACATION PERIOD, RELIEF OR SEASONAL WORK".

7. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT ORILLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.



7A. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM FOREMEN INCLUDES ROUTE FOREMEN.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: MARCH 2, 1967.

I DISSENT. IT HAS BEEN THE PRACTICE OF THIS BOARD IN THE PAST, IN A CONSIDERABLE NUMBER OF CASES INVOLVING THIS RESPONDENT, TO HAVE EXCLUDED PERSONS EMPLOYED FOR VACATION PERIODS, RELIEF OR SEASONAL WORK. I SEE NO REASON, ON THE FACTS OF THIS CASE, WHY THE BOARD SHOULD DEVIATE FROM THIS PRACTICE. NOR DO I AGREE WITH MY COLLEAGUES THAT THIS BOARD SHOULD CHANGE THIS ESTABLISHED PRACTICE BECAUSE OF THE FACT THAT SUCH EXCLUSION IS NOT PRESENT IN MANY OF THE COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BETWEEN THIS APPLICANT AND THE RESPONDENT. THE CONSIDERATIONS AS TO WHY SUCH EXCLUSIONS GRANTED IN OUR PRIOR CERTIFICATES WERE NOT INCORPORATED INTO THE SUBSEQUENT COLLECTIVE AGREEMENTS, IS SOMETHING WHICH WAS NOT ARGUED BEFORE US, AND CONSEQUENTLY IS SOMETHING UPON WHICH I AM UNABLE TO ADJUDICATE.

ACCORDINGLY, I WOULD HAVE GRANTED TO THE RESPONDENT THE EXCLUSION OF "PERSONS EMPLOYED FOR VACATION PERIODS, RELIEF OR SEASONAL WORK", WHICH IT HAD A RIGHT, BASED ON THIS BOARD'S PREVIOUS PRACTICE, TO EXPECT.

12707-66-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: J. H. BROWN Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: W. STEFANOVITCH, D. MANSON, W. HOULT AND A. NICHOLSON FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER: MARCH 3, 1967.

...

2. THE BOARD FURTHER FINDS THAT LOCAL 2480, LOCAL 2482, AND LOCAL 1304 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ARE TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER FINDS THAT THEY ARE CONSTITUENT UNIONS OF THE APPLICANT.

3. THE BOARD FURTHER FINDS THAT THE APPLICANT IS A COUNCIL OF TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT.

4. THE BOARD IS SATISFIED THAT THE CONSTITUENT UNIONS OF THE COUNCIL HAVE VESTED APPROPRIATE AUTHORITY IN THE COUNCIL TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF A BARGAINING AGENT, PURSUANT TO SECTION 8 (1) OF THE ACT.

5. HAVING REGARD TO THE EVIDENCE OF THE APPLICANT'S HISTORY AND PATTERN OF COLLECTIVE BARGAINING AS IT RELATES TO GEOGRAPHIC AREAS, THE GEOGRAPHIC JURISDICTION OF THE APPLICANT UNDER ITS DISTRICT COUNCIL BY-LAWS, AND THE GEOGRAPHIC AREA THAT HAS BEEN ENCOMPASSED IN RECENT COLLECTIVE AGREEMENTS ENTERED INTO BY THE APPLICANT, AS A PURELY INTERIM MEASURE, THE BOARD FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF ONE OR OTHER OF THE CONSTITUENT UNIONS OF THE COUNCIL AND THEREFORE, PURSUANT TO SECTION 8(3) OF THE ACT, ARE DEEMED TO BE MEMBERS OF THE APPLICANT, AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER R. W. TEAGLE: MARCH 3, 1967.

WHILE I CONCUR IN THE ABOVE DECISION, A COLLECTIVE AGREEMENT FILED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION HAS CAUSED ME CONSIDERABLE CONCERN.

THE COLLECTIVE AGREEMENT IN QUESTION IS BETWEEN THE ONTARIO PROVINCIAL COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND A CONSTRUCTION COMPANY CARRYING ON BUSINESS IN THE PROVINCE OF ONTARIO. THIS AGREEMENT WAS EXECUTED BY OFFICERS OF THE COMPANY AND REPRESENTATIVES OF THE FIVE DISTRICT COUNCILS COMPOSING THE ONTARIO PROVINCIAL COUNCIL, INCLUDING A REPRESENTATIVE OF THE APPLICANT. BY THE RECOGNITION CLAUSE OF THE AGREEMENT THE COMPANY RECOGNIZES THE ONTARIO PROVINCIAL COUNCIL AS BARGAINING AGENT FOR ALL JOURNEYMEN CARPENTERS AND THEIR APPRENTICES EMPLOYED ON CONSTRUCTION PROJECTS WITHIN ONTARIO.

ONE OF THE ARTICLES OF THE AGREEMENT PROVIDES THAT THE LOCAL COLLECTIVE AGREEMENTS AS LISTED IN AN APPENDIX, ARE APPLICABLE TO ANY PROJECT OF THE EMPLOYER AND THESE LOCAL AGREEMENTS ARE INCORPORATED IN AND FORM PART OF THE ONTARIO PROVINCIAL COUNCIL AGREEMENT. THE ARTICLE FURTHER PROVIDES THAT SHOULD LOCAL NEGOTIATIONS RESULT IN A STRIKE WITH RESPECT TO CONTRACTORS IN THE AREA, IT IS AGREED THAT THERE SHALL BE NO

WORK STOPPAGE AND NO PICKETING OF THE EMPLOYERS' PROJECTS AND NO INTERFERENCE WITH THE WORK OF THE EMPLOYERS' PROJECTS DURING SUCH STRIKE.

THE ABOVE PROVISIONS OF THE ONTARIO PROVINCIAL COUNCIL AGREEMENT, TO WHICH THE APPLICANT IS A PARTY, GIVES PREFERENTIAL TREATMENT TO ONE EMPLOYER OVER OTHER EMPLOYERS. IT IS MOST UNLIKELY THAT THE COUNCIL WOULD BE PREPARED TO GIVE THE SAME TREATMENT TO ALL OTHER EMPLOYERS, FOR TO DO SO WOULD HAVE THE EFFECT OF DESTROYING COLLECTIVE BARGAINING. SINCE THE LABOUR RELATIONS ACT IS BASED ON THE PREMISE THAT TRADE UNIONS AND EMPLOYEES WILL GOVERN AND REGULATE THEIR RELATIONS BY MEANS OF COLLECTIVE BARGAINING, A QUESTION ARISES IN MY MIND, AS TO WHETHER A TRADE UNION THAT ENTERS INTO A COLLECTIVE AGREEMENT WHICH NEGATES THE PRINCIPLES OF COLLECTIVE BARGAINING, OUGHT TO BE ENTITLED TO CLAIM THE RIGHTS AND PRIVILEGES AFFORDED TO TRADE UNIONS UNDER THE ACT. THIS IS A MATTER THAT TRADE UNIONS AND EMPLOYERS ALIKE SHOULD CONSIDER IN THE NEGOTIATION OF COLLECTIVE AGREEMENTS IN THE FUTURE.

12714-66-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT)  
V. OTIS-STARR LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: G. CHARNEY AND S. CLAIR FOR THE APPLICANT,  
AND T. F. STORIE AND B. OTIS FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 13, 1967.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED THAT MORE THAN FIFTY PER CENT, BUT NOT MORE THAN FIFTY-FIVE PER CENT, OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE APPLICANT. THE APPLICANT REQUESTS THE BOARD TO EXERCISE THE DISCRETION CONFERRED UPON IT BY SECTION 7(5) OF THE LABOUR RELATIONS ACT BY ISSUING A CERTIFICATE WITHOUT TAKING A REPRESENTATION VOTE. THE BOARD HEARD EVIDENCE RELATING TO THE REQUEST.

5. THE SPECIFICS OF THE COUNT SHOW THAT THERE ARE 31 NAMES ON THE SCHEDULES FILED BY THE RESPONDENT. THIS LIST CONTAINS THE NAMES OF EMPLOYEES D. PAPPAS, ANGELINA SPECIALE, CARMALITA SIMOES AND ANNA FROCACCIA, TO ALL OF WHOM REFERENCE WILL SUBSEQUENTLY BE MADE. THE APPLICANT HAS FILED ACCEPTABLE EVIDENCE OF MEMBERSHIP FOR 17 EMPLOYEES IN THE BARGAINING UNIT. THIS MEMBERSHIP INCLUDES MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, BUT FALLS ONE SHORT OF THE NUMBER REQUIRED FOR OUTRIGHT CERTIFICATION.

THE BOARD FINDS CONCLUSIVELY THAT EMPLOYEES  
SPECIALLY, WERE NOT IN THE RESPONDENT ON JANUARY

31st, 1967, AND THAT THE DISCHARGES WERE WITHOUT JUST CAUSE AND CONTRARY TO THE LABOUR RELATIONS ACT, AND THE BOARD SO FINDS. THE EVIDENCE IS ALSO DEFINITE AND UNEQUIVOCAL THAT D. PAPPAS WAS HIRED BY THE RESPONDENT AFTER JANUARY 31st, AND THAT SHE WAS HIRED FOR THE SPECIFIC PURPOSE OF REPLACING ONE OF THE THREE DISCHARGED EMPLOYEES. BY AGREEMENT BETWEEN THE UNION AND THE COMPANY, DATED FEBRUARY 14TH, 1967, THE THREE EMPLOYEES, TOGETHER WITH ONE FRANCES DOMINELLI WHO HAD BEEN DISCHARGED AT A LATER DATE, WERE REINSTATED AND, AS NOTED ABOVE, THEIR NAMES APPEAR ON THE LIST WHICH WAS RECEIVED BY THE BOARD ON THE TERMINAL DATE OF FEBRUARY 15TH, 1967.

7. THE REINSTATEMENT OF THE EMPLOYEES AND THE ENTRY OF THEIR NAMES AS EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE OF APPLICATION, FEBRUARY 6TH, WOULD APPEAR AT FIRST GLANCE TO RESTORE THE SITUATION TO WHAT IT SHOULD HAVE BEEN IN FACT ON THE LATTER DATE HAD THE EMPLOYER NOT IMPROPERLY DISCHARGED THE THREE WOMEN. INCIDENTALLY, THE FINDING OF THE BOARD THAT THE DISCHARGES WERE IMPROPER IS BASED SOLELY ON THE VIVA VOCE EVIDENCE AT THE HEARING, AND IN NO WAY RESTS UPON ANYTHING IN THE WRITTEN TERMS OF SETTLEMENT REFERRED TO ABOVE.

8. AS OBSERVED ABOVE, THE REINSTATEMENT OF THE THREE EMPLOYEES APPEARS TO HAVE RESTORED THE PROPOSED BARGAINING UNIT OF EMPLOYEES TO ITS PROPER NUMERICAL POSITION AS OF THE DATE OF APPLICATION. HOWEVER, THIS IS NOT IN FACT THE CASE, SINCE ONE OF THE DIRECT RESULTS OF THE IMPROPER CONDUCT OF THE EMPLOYER WAS THE ADDITION TO THE LISTS OF THE EMPLOYEES D. PAPPAS WHO, AS NOTED ABOVE, WAS, ACCORDING TO THE EVIDENCE OF MR. OTIS, HIRED FOR THE SPECIFIC PURPOSE OF REPLACING ONE OF THE THREE EMPLOYEES AND WHO WAS, ACCORDING TO THE SAME WITNESS, RELEASED FROM EMPLOYMENT WHEN THE DISCHARGED EMPLOYEES CAME BACK. PAPPAS WAS AN EMPLOYEE ON THE DATE OF THE APPLICATION, BUT WHILE THE NAMES OF THE DISCHARGED EMPLOYEES WERE RESTORED TO THE LIST, THE NAME OF PAPPAS WAS NOT REMOVED. THE CONSEQUENCES OF THE ILLEGAL CONDUCT OF THE EMPLOYER WERE THEREFORE NOT ALL REMOVED BY REASON OF THE REINSTATEMENTS. THE LISTS OF EMPLOYEES WERE AND CONTINUED TO BE AT ALL MATERIAL TIMES INCREASED BY ONE EMPLOYEE OVER THE NUMBER WHICH THEY WOULD OTHERWISE HAVE SHOWN IF THE DISCHARGES HAD NOT TAKEN PLACE. THIS INCREASE IS PREJUDICIAL TO THE EMPLOYEES WHO SEEK TO BE REPRESENTED BY A UNION, IN THAT IT PREVENTS THE OUTRIGHT CERTIFICATION OF THE UNION AND REDUCES THE MEMBERSHIP TO A VOTE POSITION. IN THIS RESPECT THE DISCHARGE OF THE EMPLOYEES BECOMES AN ACTION PREJUDICIAL NOT ONLY TO THOSE DIRECTLY INVOLVED BUT ALSO TO THE MAJORITY OF THEIR FELLOW EMPLOYEES WHOSE CLEARLY DISCERNIBLE WISHES TO BE REPRESENTED BY A TRADE UNION ARE THEREBY, IN PART, FRUSTRATED OR, AT LEAST, PLACED IN A STATE OF JEOPARDY IN WHICH THEY WOULD NOT OTHERWISE HAVE BEEN.

9. THE EMPLOYEES AS A WHOLE ARE DEPRIVED OF THE RIGHT TO IMMEDIATE CERTIFICATION BY REASON OF THE VIOLATION OF THE ACT BY THE EMPLOYER. IT WOULD APPEAR TO THE BOARD THAT IT WOULD BE A DENIAL OF FUNDAMENTAL JUSTICE TO FAIL TO PUT, INsofar AS IT IS POSSIBLE, THE EMPLOYEES AND THE UNION IN THE PRECISE POSITION IN WHICH THEY WOULD HAVE BEEN HAD IT NOT BEEN FOR THE WRONGDOING OF THE COMPANY. IN THE SPECIAL CIRCUMSTANCES OF THIS CASE, WHERE THE SITUATION SOUGHT TO BE REMEDIED AROSE DIRECTLY AND SOLELY FROM THE WRONGFUL ACT OF THE RESPONDENT, THE BOARD DECLARES THAT, FOR THE PURPOSES OF THE COUNT, D. PAPPAS IS EXCLUDED FROM THE LIST OF EMPLOYEES IN THE BARGAINING UNIT.



10. IN THE RESULT, THE BARGAINING UNIT FOUND TO BE APPROPRIATE HEREIN IS COMPRISED OF THIRTY EMPLOYEES AND THE UNION MEMBERSHIP OF SEVENTEEN EMPLOYEES. THE BOARD THEREFORE IS SATISFIED, ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. IN VIEW OF THE FOREGOING, IT IS UNNECESSARY FOR THE BOARD TO DEAL WITH THE REQUEST UNDER SECTION 7(5). A CERTIFICATE WILL ISSUE.

12726-66-R: LOCAL UNION 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (A.F.L.-C.I.O.-C.L.C.) (APPLICANT) v. BACH-SIMPSON LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. F. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: L. MORPHY, W. NICHOLLS AND D. BUTT FOR THE APPLICANT,  
AND W. S. COOK AND J. HIND FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 10, 1967.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WARTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT RAISES THE OBJECTION THAT THE APPLICATION IS PREMATURE, IN THAT A PLANNED BUILD-UP OF EMPLOYEES IS TAKING PLACE, AND A REPRESENTATIVE NUMBER OF EMPLOYEES HAS NOT YET BEEN HIRED. COUNSEL FOR THE APPLICANT SUBMITTED THAT THE OBJECTION OUGHT NOT TO BE ENTERTAINED, SINCE, ON HIS SUBMISSION, THE BOARD LACKED JURISDICTION TO CONSIDER SUCH AN ISSUE UPON AN APPLICATION FOR CERTIFICATION.

5. THERE IS NO DOUBT THAT THIS APPLICATION IS PROPERLY BROUGHT PURSUANT TO SECTION 5(1) OF THE LABOUR RELATIONS ACT, WHICH PROVIDES AS FOLLOWS:-

WHERE NO TRADE UNION HAS BEEN CERTIFIED AS  
BARGAINING AGENT OF THE EMPLOYEES OF AN EMPLOYER  
IN A UNIT THAT A TRADE UNION CLAIMS TO BE APPROPRIATE  
FOR COLLECTIVE BARGAINING AND THE EMPLOYEES IN THE  
UNIT ARE NOT BOUND BY A COLLECTIVE AGREEMENT, A TRADE  
UNION MAY, SUBJECT TO SECTION 46, APPLY AT ANY TIME  
TO THE BOARD FOR CERTIFICATION AS BARGAINING  
AGENT OF THE EMPLOYEES IN THE UNIT.

UPON SUCH AN APPLICATION, THE BOARD IS REQUIRED BY SECTION 6(1) OF THE ACT TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING. THAT DETERMINATION HAS BEEN MADE IN THE INSTANT CASE AND APPEARS IN PARAGRAPH 3 ABOVE. SUBSECTIONS (1) AND (2) OF SECTION 7 PROVIDE AS FOLLOWS:-

7. (1) UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND THE NUMBER OF EMPLOYEES IN THE UNIT WHO WERE MEMBERS OF THE TRADE UNION AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 77.

(2) IF THE BOARD IS SATISFIED THAT NOT LESS THAN 45 PER CENT AND NOT MORE THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL, AND IF THE BOARD IS SATISFIED THAT MORE THAN 55 PER CENT OF SUCH EMPLOYEES ARE MEMBERS OF THE TRADE UNION, THE BOARD MAY DIRECT THAT A REPRESENTATION VOTE BE TAKEN.

6. IN THE INSTANT CASE, THE BOARD FINDS THAT THERE WERE 11 PERSONS IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE. OF THESE 9 WERE MEMBERS OF THE APPLICANT UNION AT THE MATERIAL TIMES FIXED PURSUANT TO CLAUSE (J) OF SUBSECTION (2) OF SECTION 77. IT IS CLEAR THAT, HAVING REGARD TO THE NUMBER OF PERSONS IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, MORE THAN FIFTY-FIVE PER CENT OF SUCH PERSONS ARE MEMBERS OF THE TRADE UNION. IN SUCH CIRCUMSTANCES, UNDER SECTION 7(2) OF THE ACT, THE BOARD "MAY DIRECT THAT A REPRESENTATION VOTE BE TAKEN". IN CASES WHERE IT HAS BEEN SHOWN TO THE SATISFACTION OF THE BOARD THAT A SUBSTANTIAL BUILD-UP IN AN EMPLOYER'S WORK FORCE IS BEING UNDERTAKEN, THE BOARD HAS DIRECTED SUCH A VOTE PURSUANT TO SECTION 7(2) OF THE ACT. THE STATUTE CLEARLY PROVIDES THE BOARD WITH A DISCRETION IN THESE CIRCUMSTANCES, AND IN OUR OPINION IT IS PROPER TO CONSIDER SUCH A MATTER AS THE IMMINENT EXPANSION OF THE EMPLOYMENT FORCE IN DETERMINING HOW TO EXERCISE OUR DISCRETION IN ANY PARTICULAR CASE.

7. AS WE STATED IN THE EMIL FRANT AND PETER WASELOVICH CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,057, C.L.S. 76-539, THE BOARD IS FACED WITH THE TASK OF BALANCING THE RIGHT OF PERSONS PRESENTLY EMPLOYED TO COLLECTIVE BARGAINING AND THE RIGHT OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. THE CONSIDERATIONS WHICH THE BOARD HAS TAKEN INTO ACCOUNT IN MAKING ITS DETERMINATION ARE SET FORTH IN THE ABOVE DECISION AS FOLLOWS:-

FACED WITH THIS CONFLICT OF INTERESTS, THE BOARD HAS, IN THE PAST, IN SOME CASES, REFUSED TO CERTIFY OR ORDER AN IMMEDIATE VOTE-- AND HAS DIRECTED THAT A VOTE BE TAKEN AT A LATER DATE---WHERE, ON ALL THE EVIDENCE, IT APPEARED TO THE SATISFACTION OF THE BOARD THAT THE EMPLOYEES DID NOT CONSTITUTE A SUBSTANTIAL AND REPRESENTATIVE SEGMENT OF THE WORK FORCE TO BE EMPLOYED. OF COURSE IN SUCH CASES IT MUST BE ESTABLISHED THAT THERE IS A REAL LIKELIHOOD THAT THE INCREASE IN THE WORK FORCE WILL TAKE PLACE WITHIN A REASONABLE PERIOD OF TIME AND, IF IT APPEARS THAT THE BUILD-UP

DEPENDS ON FACTORS BEYOND THE CONTROL OF THE EMPLOYER SUCH AS THE SALEABILITY OF PRODUCTS, THE PRESENCE OF SUFFICIENT WORKERS OR THE AVAILABILITY OF MATERIALS FOR, SAY, THE PURPOSE OF PLANT EXPANSION, THE BOARD, INSTEAD OF DIRECTING A VOTE TO BE HELD IN THE FUTURE, MAY CERTIFY OR ORDER AN IMMEDIATE VOTE DEPENDING ON THE MEMBERSHIP POSITION OF THE APPLICANT.

8. IT MAY BE NOTED THAT SECTION 92(2) OF THE ACT PROVIDES, IN APPLICATIONS MADE PURSUANT TO THE PROVISIONS OF THE ACT APPLYING TO THE CONSTRUCTION INDUSTRY, THAT THE BOARD NEED NOT HAVE REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER THE APPLICATION WAS MADE. IN CASES SUCH AS THE INSTANT CASE, TO WHICH THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT DO NOT APPLY, IT HAS BEEN THE BOARD'S PRACTICE TO CONSIDER EVIDENCE OF THE BUILD-UP OF AN EMPLOYER'S EMPLOYMENT FORCE, AND, IN OUR VIEW, THIS PRACTICE IS A PROPER ONE UNDER THE PROVISIONS OF THE ACT ABOVE REFERRED TO.

9. THE EVIDENCE BEFORE US ESTABLISHES THAT, WHILE THERE WERE 11 PERSONS IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION, THERE WERE 21 SUCH PERSONS ON THE DATE OF THE HEARING. THERE ARE FIRM PLANS FOR THE HIRING OF NEW EMPLOYEES, AND A WORKING FORCE OF SOME 50 PERSONS IS EXPECTED TO BE ACHIEVED BY THE END OF MAY OF THIS YEAR.

10. HAVING REGARD TO THE PRINCIPLES ABOVE REFERRED TO AND TO THE EVIDENCE BEFORE US, THE BOARD IS SATISFIED THAT THE RESPONDENT HAS A PLANNED PROGRAM FOR THE INCREASE OF ITS WORK FORCE, AND THAT THERE IS A REAL LIKELIHOOD THAT THE INCREASE WILL TAKE PLACE IN THE SPECIFIED PERIOD. IN ACCORDANCE WITH ITS USUAL PRACTICES IN SUCH CASES, THE BOARD DIRECTS THAT THE RESPONDENT REPORT TO THE BOARD ON THE NUMBER OF PERSONS IN ITS EMPLOY IN THE BARGAINING UNIT ON THE FOLLOWING DATES, UNLESS THE BOARD DIRECTS OTHERWISE: MARCH 17TH, MARCH 31ST, APRIL 14TH, APRIL 28TH, MAY 12TH AND MAY 26TH, 1967.

12776-66-R: LOCAL 210, BUILDING SERVICE EMPLOYEES' UNION, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL-CIO-CLC) (APPLICANT) V. BOARD OF PUBLIC SCHOOL TRUSTEES OF THE TOWNSHIP OF SANDWICH SOUTH (RESPONDENT).

BEFORE: G. W. REED, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: J. H. NICHOLLS FOR THE APPLICANT AND J. GRANT MCKEE FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 14, 1967.

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2. THE APPLICANT AND THE RESPONDENT PROPOSE A UNIT IN THE FOLLOWING

"ALL EMPLOYEES OF THE RESPONDENT IN THE MAINTENANCE AND JANITORIAL CLASSIFICATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE STAFF AND PROFESSIONAL TEACHING STAFF."

IN BROCK DISTRICT HIGH SCHOOL BOARD CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER, 1966, P. 420, THE BOARD MADE THE FOLLOWING OBSERVATIONS:

"IN APPLICATIONS FOR CERTIFICATION COVERING EMPLOYEES OF SCHOOL BOARDS AND BOARDS OF EDUCATION THERE HAVE BEEN DIFFERENCES IN THE PAST AS TO THE MANNER IN WHICH THE BOARD HAS DESCRIBED THE UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. IN SOME INSTANCES THE UNIT HAS BEEN DESCRIBED IN TERMS OF EMPLOYEES ENGAGED IN CARETAKING AND MAINTENANCE AND IN OTHER INSTANCES THE UNIT HAS BEEN DESCRIBED SO AS TO ENCOMPASS ALL EMPLOYEES. THE BOARD IS INCLINED TOWARD THE VIEW, HOWEVER, THAT THE LATTER IS THE MORE APPROPRIATE DESCRIPTION."

IN THAT CASE, THE BOARD GRANTED A UNIT IN TERMS OF "ALL EMPLOYEES" RATHER THAN IN TERMS OF EMPLOYEES ENGAGED IN CERTAIN OCCUPATIONS.

3. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT OFFICE STAFF AND PROFESSIONAL TEACHING STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12829-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CANADIAN CYLINDER CO., (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: ROBERT WHITE, CARL ANDERSON, RALPH MACBRIDE AND CLARENCE MATTHEWS FOR THE APPLICANT, T. F. STORIE AND N. DUKE FOR THE RESPONDENT, CECIL DICKENS, MURRAY COOPER, JOHN GARDINER AND JOHN COLE FOR THE OBJECTORS.



DECISION OF THE BOARD:

MARCH 23, 1967.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THERE WAS FILED IN THIS MATTER A DOCUMENT IN OPPOSITION TO THIS APPLICATION. MR. DICKENS, THE EMPLOYEE WHO TESTIFIED CONCERNING THE ORIGINATION AND CIRCULATION OF THIS DOCUMENT, STATED THAT THE DOCUMENT WAS PREPARED BY HIM AT HIS HOME ON MARCH 13TH, 1967.

4. PRIOR TO THE ORIGINATION OF THE DOCUMENT ON MARCH 3RD, 1967, MR. DICKENS WAS SUMMONED TO THE PLANT SUPERINTENDENT'S OFFICE WHERE HE WAS QUESTIONED CONCERNING HIS MEMBERSHIP IN THE UNION AND THE REASONS FOR THE APPARENT DISCONTENT AMONG THE EMPLOYEES. MR. DICKENS VOICED A COMPLAINT TO THE PLANT MANAGER CONCERNING HIS ASSIGNMENT TO SHIFT WORK AND SHORTLY THEREAFTER THE PLANT MANAGER RECTIFIED THE COMPLAINT. THE PLANT MANAGER ALSO BROUGHT TO MR. DICKENS' ATTENTION THE FACT THAT THE EMPLOYEES OF THE BRANCH OF THE COMPANY IN MEMPHIS HAD OBTAINED UNION REPRESENTATION AND THE END RESULT WAS THAT THE EMPLOYEES AT THAT PLANT HAD SUFFERED A LOSS IN THEIR PAY. THE PLANT MANAGER APPARENTLY CALLED ALL BUT ONE OF THE EMPLOYEES INTO HIS OFFICE AND HAD SIMILAR DISCUSSIONS WITH THEM.

5. MR. DICKENS TESTIFIED THAT ON MARCH 13TH HE REATTENDED AT THE PLANT SUPERINTENDENT'S OFFICE WHERE HE ADVISED THE PLANT SUPERINTENDENT THAT HE DIDN'T HAVE TO WORRY ABOUT THE UNION ANY LONGER BECAUSE MANY OF THE EMPLOYEES WOULD VOTE AGAINST IT. THE PLANT SUPERINTENDENT, HOWEVER, INDICATED THAT IN HIS OPINION THE MATTER WOULD NOT BE SUBMITTED TO A VOTE. MR. DICKENS TESTIFIED THAT THE PLANT SUPERINTENDENT STATED THAT "I AM SORRY, BUT THERE IS NOT MUCH WE CAN DO AS THE UNION IS IN NOW UNLESS SOMEONE GOES TO THE BOARD MEETING AND REPRESENTS THE MEN AND PUTS IN A COMPLAINT". THE PLANT SUPERINTENDENT THEN BROUGHT THE NOTICE TO EMPLOYEES, FORM 5, TO THE ATTENTION OF MR. DICKENS AND SUGGESTED THAT HE READ SECTION 5, 6 AND 7 OF THAT FORM. MR. DICKENS READ THE INSTRUCTIONS ON THE FORM AND THAT EVENING PREPARED THE DOCUMENT WHICH WAS SUBMITTED IN OPPOSITION TO THIS APPLICATION.

6. FOLLOWING THE TESTIMONY OF THE PLANT SUPERINTENDENT AT THE HEARING, MR. DICKENS AGAIN ENTERED THE WITNESS BOX AND CORRECTED CERTAIN STATEMENTS HE HAD MADE IN ORDER THAT HIS TESTIMONY WOULD CORRESPOND TO THE TESTIMONY OF THE PLANT SUPERINTENDENT. IT WAS READILY APPARENT THAT MR. DICKENS WAS ATTEMPTING TO PATCH UP HIS TESTIMONY FOR THIS PURPOSE.

7. HAVING REGARD TO ALL THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE DOCUMENT SUBMITTED IN OPPOSITION TO THIS APPLICATION, THE BOARD IS OF OPINION THAT THE DOCUMENT DOES NOT TRULY REPRESENT THE VOLUNTARY SIGNIFICATION IN WRITING BY THE EMPLOYEES OF THEIR OPPOSITION TO THE APPLICATION. THE BOARD IS THEREFORE NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBER IF SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

INDEXED ENDORSEMENTS - TERMINATION

12680-66-R: CAMILLE VIGNEAULT (APPLICANT) v. THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS-LOCAL 89 (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND O. HODGES.

APPEARANCES AT HEARING: A. J. STONE FOR THE APPLICANT, AND NORMAN A. PAXTON AND L. A. MACLEAN FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 7, 1967.

1. THIS IS AN APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT. THE APPLICANT CONTENDS THAT THIS APPLICATION PROPERLY COMES WITHIN SECTION 43(2) OF THE ACT. THAT PROVISION IS AS FOLLOWS:-

ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN A COLLECTIVE AGREEMENT MAY, SUBJECT TO SECTION 46, APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT,

- (A) IN THE CASE OF A COLLECTIVE AGREEMENT FOR A TERM OF NOT MORE THAN THREE YEARS, ONLY AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION;
- (B) IN THE CASE OF A COLLECTIVE AGREEMENT FOR A TERM OF MORE THAN THREE YEARS, ONLY AFTER THE COMMENCEMENT OF THE THIRTY-FIFTH MONTH OF ITS OPERATION AND BEFORE THE COMMENCEMENT OF THE THIRTY-SEVENTH MONTH OF ITS OPERATION AND DURING THE TWO-MONTH PERIOD IMMEDIATELY PRECEDING THE END OF EACH YEAR THAT THE AGREEMENT CONTINUES TO OPERATE THEREAFTER OR AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION, AS THE CASE MAY BE;
- (C) IN THE CASE OF A COLLECTIVE AGREEMENT REFERRED TO IN CLAUSE A OR B THAT PROVIDES THAT IT WILL

CONTINUE TO OPERATE FOR ANY FURTHER TERM OR SUCCESSIVE TERMS IF EITHER PARTY FAILS TO GIVE TO THE OTHER NOTICE OF TERMINATION OR OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL, WITH OR WITHOUT MODIFICATIONS, OF THE AGREEMENT OR TO THE MAKING OF A NEW AGREEMENT, ONLY DURING THE LAST TWO MONTHS OF EACH YEAR THAT IT SO CONTINUES TO OPERATE OR AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION, AS THE CASE MAY BE

2. IN ORDER TO BRING THIS APPLICATION WITHIN THE AMBIT OF THAT PROVISION, COUNSEL FOR THE APPLICANT FILED WITH THE BOARD THE FOLLOWING DOCUMENTS:-

- (1) AN UNDATED, UNSIGNED DOCUMENT HEADED "LABOUR AGREEMENT", STATED TO BE BETWEEN THE KAPUSKASING LAUNDRY AND DRY CLEANERS LIMITED AND THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS. ARTICLE 6 OF THIS DOCUMENT WAS AS FOLLOWS:-

6. PERIOD

THIS AGREEMENT SHALL BE IN EFFECT FROM FEBRUARY 1ST, 1965 TO AND INCLUDING JANUARY 31ST, 1966, AND FROM YEAR TO YEAR THEREAFTER, UNLESS TERMINATION OR CHANGES ARE DESIRED BY EITHER PARTY, IN WHICH EVENT THE PARTY DESIRING THE CHANGE SHALL SERVE WRITTEN NOTICE UPON THE OTHER PARTY THIRTY DAYS PRIOR TO JANUARY 31ST, ON ANY GIVEN YEAR. THE SAID WRITTEN NOTICE MUST STATE THE REASONS FOR OPENING OF NEGOTIATIONS.

THIS AGREEMENT REMAINS IN EFFECT UNTIL A NEW AGREEMENT IS SIGNED, BUT WHEN A NEW AGREEMENT HAS BEEN SIGNED THIS AGREEMENT BECOMES NIL AND VOID.

THERE SHALL BE NO SUSPENSION OR WORK STOPPAGE UPON THE TERMINATION OF THIS AGREEMENT OR FAILURE OF RENEWAL, EXCEPT WITH THE APPROVAL OF THE EXECUTIVE BOARD OF THE SIGNATORY UNION, AS PROVIDED FOR IN THEIR CONSTITUTION AND BY-LAWS.

- (2) A PHOTOSTAT COPY OF A DOCUMENT HEADED "MEMORANDUM OF AGREEMENT BETWEEN THE KAPUSKASING LAUNDRY AND DRY CLEANERS LIMITED AND THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS - LOCAL 89 - MARCH 21ST, 1966". THIS DOCUMENT BEARS SIGNATURES ON BEHALF OF KAPUSKASING LAUNDRY AND DRY CLEANERS LIMITED AND THE INTERNATIONAL BROTHERHOOD OF PULP,

SULPHITE AND PAPER MILL WORKERS - LOCAL 89.

- (3) A LETTER DATED JANUARY 17TH, 1967, FROM THE RESEARCH BRANCH OF THE DEPARTMENT OF LABOUR TO A FIRM OF SOLICITORS IN KAPUSKASING, ADVISING THEM THAT NO COLLECTIVE AGREEMENT HAD BEEN FILED WITH THE DEPARTMENT OF LABOUR FOR KAPUSKASING LAUNDRY AND DRY CLEANERS LIMITED.

IN CONNECTION WITH ITEM (3) ABOVE, IT SHOULD BE NOTED THAT SECTION 61 OF THE LABOUR RELATIONS ACT PROVIDES THAT EACH PARTY TO A COLLECTIVE AGREEMENT SHALL FORTHWITH, AFTER IT IS MADE, FILE ONE COPY THEREOF WITH THE MINISTER OF LABOUR.

3. COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE APPLICANT HAD NOT ESTABLISHED THOSE FACTS WHICH WOULD ENTITLE IT TO PROCEED UNDER SECTION 43.

4. IN DEALING WITH THIS SUBMISSION, IT SHOULD BE BORNE IN MIND THAT THE APPLICATION IS BROUGHT BY AN EMPLOYEE; THAT EMPLOYEES ARE NOT AS SUCH PARTIES TO COLLECTIVE AGREEMENTS; AND THAT MATTERS RELATING TO THE EXISTENCE OR OTHERWISE OF A COLLECTIVE AGREEMENT ARE WITHIN THE KNOWLEDGE OF THE EMPLOYER (WHO IS NOT A PARTY TO THESE PROCEEDINGS) AND THE RESPONDENT. THESE PROCEEDINGS RELATE TO THE RESPONDENT'S RIGHT TO REPRESENT EMPLOYEES, AND YET THE RESPONDENT IN THESE PROCEEDINGS, WHILE RESISTING THE APPLICATION, REFUSES TO ADMIT WHETHER OR NOT IT DOES REPRESENT THOSE EMPLOYEES AND PURPORTS TO PUT THEM TO THE STRICT PROOF OF THAT FACT! FURTHER, IT MUST BE REMEMBERED THAT THE RESPONDENT (AS WELL AS THE EMPLOYER) APPEARS TO HAVE FAILED TO COMPLY WITH THE PROVISIONS OF SECTION 61 OF THE ACT. IF THE RESPONDENT HAD COMPLIED WITH SECTION 61, THEN A COLLECTIVE AGREEMENT WOULD BE AVAILABLE TO THE APPLICANT IN THESE PROCEEDINGS. THE UNLAWFUL FAILURE OF THE RESPONDENT TO COMPLY WITH THE STATUTE CAN SCARCELY SERVE TO ENHANCE ITS POSITION.

5. BY SECTION 14 OF THE BOARD'S RULES OF PROCEDURE THE RESPONDENT WAS REQUIRED TO FILE A REPLY TO THIS APPLICATION IN FORM 16. IT IS NOTEWORTHY THAT IN ITS REPLY THE RESPONDENT STATED AS FOLLOWS:-

3. DETAILED DESCRIPTION OF THE UNIT OF EMPLOYEES FOR WHICH THE RESPONDENT IS THE BARGAINING AGENT, INCLUDING THE MUNICIPALITY OR OTHER GEOGRAPHIC AREA AFFECTED:

(BLANK)

4. APPROXIMATE NUMBER OF EMPLOYEES IN THE UNIT AS OF THE DATE THE APPLICATION WAS MADE:

(BLANK)

5. THE DATE OF CERTIFICATION, IF ANY, OF THE RESPONDENT AS BARGAINING AGENT OF THE EMPLOYEES IN THE UNIT:

(BLANK)



THE RESPONDENT DID COMPLETE PARAGRAPH 6 OF THE REPLY AS FOLLOWS:-

6. THE RESPONDENT IS OR WAS A PARTY TO OR BOUND BY A COLLECTIVE AGREEMENT A COPY OF WHICH IS ENCLOSED HERewith, WITH KAPUSKASING LAUNDRY & DRY CLEANERS THAT,  
(NAME OF THE EMPLOYER)

(A) WAS SIGNED ON THE 21ST DAY OF MARCH, 1966;

(B) BECAME EFFECTIVE ON THE 1ST DAY OF NOVEMBER, 1966;  
AND

(C) CONTAINS THE FOLLOWING PROVISION RELATING TO ITS TERMINATION OR RENEWAL:

(BLANK).

IN SPITE OF THE RESPONDENT'S STATEMENT IN PARAGRAPH 6, NO COPY OF A COLLECTIVE AGREEMENT WAS ENCLOSED WITH ITS REPLY. IT MAY BE NOTED THAT THE DATE REFERRED TO IN PARAGRAPH 6 CORRESPONDS WITH THE DATE ON WHICH THE "MEMORANDUM" ABOVE REFERRED TO APPEARS TO HAVE BEEN SIGNED. THAT MEMORANDUM PROVIDES, INTER ALIA FOR AN INCREASE IN WAGES EFFECTIVE NOVEMBER 1ST, 1966. THE MEMORANDUM DOES NOT PURPORT TO ALTER THE TERM OF ANY COLLECTIVE AGREEMENT.

6. IN ALL OF THE CIRCUMSTANCES, SUBSTANTIAL DOUBT ARISES WHETHER THE RESPONDENT IS BARGAINING AGENT FOR ANY OF THE EMPLOYEES OF KAPUSKASING LAUNDRY AND DRY CLEANERS LIMITED. ON THE ONE HAND, THE "LABOUR AGREEMENT" DESCRIBED IN PARAGRAPH 2 ABOVE, SUGGESTS THAT BARGAINING RIGHTS FOR THE EMPLOYEES IN QUESTION ARE HELD BY THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS RATHER THAN BY THE NAMED RESPONDENT, LOCAL 89 OF THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS. ON THE OTHER HAND, IF IN FACT THE RESPONDENT, LOCAL 89, HAS IN FACT HELD BARGAINING RIGHTS FOR EMPLOYEES OF THE EMPLOYER, THEN, IN THE CIRCUMSTANCES DESCRIBED, A QUESTION ARISES WHETHER IT CAN NOW BE HEARD TO ASSERT BARGAINING RIGHTS. THE CIRCUMSTANCES WHICH GIVE RISE TO THIS QUESTION INCLUDE, PARTICULARLY, THE FAILURE OF THE RESPONDENT TO COMPLY WITH SECTION 61 OF THE ACT, AND THE FAILURE OF THE RESPONDENT TO FURNISH THE INFORMATION REQUIRED BY FORM 16 AND THE BOARD'S RULES.

7. NEITHER OF THESE QUESTIONS, HOWEVER, WAS THE SUBJECT OF ARGUMENT AT THE HEARING OF THIS MATTER. IN OUR VIEW, THE INTERESTS OF JUSTICE WOULD BEST BE SERVED BY OUR HEARING THE REPRESENTATIONS OF COUNSEL ON THESE ISSUES. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR HEARING, SO THAT THE PARTIES MAY SHOW CAUSE

- (1) WHY THE BOARD SHOULD NOT DISMISS THIS APPLICATION ON THE GROUND THAT THE NAMED RESPONDENT IS NOT BARGAINING AGENT FOR THE EMPLOYEES AFFECTED BY THIS APPLICATION;

- (2) WHY THE BOARD SHOULD NOT DISMISS THIS APPLICATION ON THE GROUND THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS FOR EMPLOYEES OF THE EMPLOYER.

12766-66-R: EBERHARD MATCZYNSKI (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)  
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: EDWIN T. NOBBS, E. MATCZYNSKI AND H. SIMPSON FOR THE APPLICANT, ROBERT WHITE AND JACK PAWSON FOR THE RESPONDENT, AND NO ONE APPEARING FOR A GROUP OF EMPLOYEES.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: MARCH 29, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. THERE WERE SUBMITTED IN SUPPORT OF THE APPLICATION TWO SORTS OF EVIDENCE. ONE OF THESE CONSISTED OF A PETITION BEARING THE NAMES OF 8 EMPLOYEES OF THE EMPLOYER, PITNEY-BOWES OF CANADA LIMITED, AND HEADED, "WE, THE FOLLOWING EMPLOYEES OF PITNEY-BOWES, DO NOT WISH TO BE REPRESENTED BY THE U.A.W.". A WITNESS IDENTIFIED 7 OF THE SIGNATURES ON THE PETITION, BUT COULD GIVE NO EVIDENCE RELATING TO THE ORIGINATION OF THE DOCUMENT, WHICH HE HAD RECEIVED UNASKED THROUGH THE COMPANY'S INTERNAL MAIL. THERE BEING NO EVIDENCE BEFORE THE BOARD RELATING TO THE ORIGINATION OF THIS DOCUMENT, THE BOARD, AS IS USUAL IN SUCH CASES, WILL GIVE IT NO FURTHER CONSIDERATION.

2. THE OTHER EVIDENCE SUBMITTED TO THE BOARD CONSISTED OF 18 INDIVIDUAL SLIPS OF PAPER, 17 OF WHICH READ:

I NO LONGER WISH TO BE REPRESENTED BY  
THE UNITED AUTOMOBILE AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA UNION

FEB 14/67 (SIGNATURE).

THE 18TH SLIP OF PAPER INDICATED THAT THE EMPLOYEES CONCERNED DID WISH TO BE REPRESENTED BY THE RESPONDENT, AND CONSEQUENTLY DOES NOT SUPPORT THE APPLICATION. THE EVIDENCE RELATING TO THE ORIGINATION AND SIGNING OF THESE DOCUMENTS WAS AS FOLLOWS: ONE OF THE COMPANY'S EMPLOYEES, WITHOUT STATING HIS PURPOSE, RECEIVED PERMISSION TO HOLD A MEETING IN THE CAFETERIA ON THE COMPANY'S PREMISES, FOLLOWING WORK ON FEBRUARY 14TH, 1967. HE NOTIFIED ALL THOSE EMPLOYEES KNOWN TO HIM AS UNION MEMBERS OF THE MEETING, AND MOST OF THESE ATTENDED. AT THE MEETING HE DISTRIBUTED BLANK SLIPS OF PAPER AND PUT UP A SIGN ON WHICH APPEARED THE WORDING REPRODUCED ON THE 17 SLIPS OF PAPER SUBMITTED TO THE BOARD. HE REQUESTED THOSE PERSONS TO FILL OUT THE SLIPS

INDICATING WHETHER OR NOT THEY DESIRED TO BE REPRESENTED BY THE RESPONDENT, TO SIGN THEM AND TO PLACE THEM IN ENVELOPES. THE WITNESS OBSERVED THE EMPLOYEES WRITING OUT THE SLIPS, BUT HE COLLECTED THEM IN THE ENVELOPES SO THAT THERE WAS NO DISCLOSURE OF THE WISHES OF ANY INDIVIDUAL EMPLOYEE. THE EMPLOYEES MENTIONED WERE THE ONLY ONES PRESENT AT THE MEETING, AND THE WITNESS, UNDER OATH, DENIED THAT THERE HAD BEEN ANY MANAGEMENT INTERFERENCE RELATING TO THE PREPARATION OR SUBMISSION OF THESE DOCUMENTS. THE WITNESS DID NOT SEE EMPLOYEES ACTUALLY SUBSCRIBING THEIR SIGNATURES TO ANY OF THE DOCUMENTS. AFTER HE HAD RECEIVED THE DOCUMENTS, THE WITNESS TOOK THEM TO HIS SOLICITOR, WHO SUBMITTED THEM TO THE BOARD.

3. IN AN APPLICATION SUCH AS THIS, BROUGHT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT, THE BOARD MUST DETERMINE "WHETHER OR NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING - - - THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION". BEFORE GIVING WEIGHT TO EVIDENCE SUBMITTED BY AN APPLICANT IN SUCH A CASE, THE BOARD REQUIRES VIVA VOCE EVIDENCE AS TO THE CIRCUMSTANCES RELATING TO THE ORIGINATION OF THE DOCUMENT OR DOCUMENTS IN QUESTION, AND AS TO THE MANNER IN WHICH THE SIGNATURES THEREON WERE OBTAINED: SEE SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. IT IS NOT NECESSARY, IN ORDER TO COMPLY WITH THESE RULES, THAT THERE BE EYE-WITNESS TESTIMONY AS TO THE ACTUAL INSCRIBING OF EACH SIGNATURE AS LONG AS SUFFICIENT EVIDENCE OF THE MANNER OF OBTAINING SUCH SIGNATURES IS BEFORE THE BOARD.

4. THE FACTS IN THE INSTANT CASE ARE VERY SIMILAR TO THOSE WITH WHICH THE BOARD DEALT IN THE PYROTENAX OF CANADA LTD. CASE, 60 C.L.L.C. 65. IN THAT CASE SOME 18 MIMEOGRAPHED "BALLOTS" BEARING SIGNATURES OF EMPLOYEES AND INDICATING SUPPORT FOR AN APPLICATION FOR DECERTIFICATION WERE SUBMITTED TO THE BOARD. THESE BALLOTS HAD BEEN PREPARED BY AN EMPLOYEE WHO APPROACHED FELLOW EMPLOYEES INDIVIDUALLY, HANDED THEM A BLANK BALLOT, WAITED WHILE IT WAS FILLED IN, RECEIVED IT BACK AND SUBSEQUENTLY SENT IT TO THE BOARD. HE DID NOT OBSERVE THE ACTUAL SIGNING. THE BOARD'S ENDORSEMENT READ IN PART AS FOLLOWS:-

TURNING NOW TO THE QUESTION OF THE WEIGHT TO BE ACCORDED THIS EVIDENCE, THE BOARD INFORMS APPLICANTS FOR "DECERTIFICATION" THAT ANY REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE, AS TO (1) THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE MATERIAL FILED IN SUPPORT OF THE APPLICATION AND, (2) THE MANNER IN WHICH THE SIGNATURES OF THE EMPLOYEES WERE OBTAINED. NO QUESTION ARISES AS TO THE FIRST REQUIREMENT. HOWEVER, IT IS ARGUED THAT IN EFFECT SINCE CATFORD DIDN'T ACTUALLY SEE THE PERSONS PLACE THEIR SIGNATURES ON THE DOCUMENTS THERE WAS NO WITNESS TO THE SIGNATURE AND THE SECOND REQUIREMENT OF THE BOARD HAS NOT BEEN SATISFIED.

IN CONSIDERING THIS ARGUMENT IT IS PROPER TO EXAMINE THE REASON FOR THE BOARD'S REQUIREMENTS. AMONG OTHER THINGS, WHAT THE BOARD IS SEEKING IS

ASSURANCE FROM PERSONS WITH FIRST-HAND KNOWLEDGE THAT THE DESIRES OF THE EMPLOYEES AS REFLECTED IN THE WRITTEN DOCUMENTS WERE VOLUNTARILY RECORDED AND THAT MANAGEMENT HAS NOT IMPROPERLY INFLUENCED THEM IN ANY WAY. THIS PRINCIPLE IS DISCUSSED IN THE HARRY HAYLEY AND SONS LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER, (1955-1959) ¶16,106, C.L.S. 76-595. IN THE PRESENT CASE IT IS CLEAR ON THE EVIDENCE THAT WHILE CATFORD MAY NOT HAVE SEEN ANYONE WRITE HIS NAME - OR IN HIS OWN WORDS "HE DIDN'T TAKE ANY NOTICE OF THE SIGNING" - HE WAS PRESENT WHEN THE EMPLOYEES SIGNED THE DOCUMENTS AND NO PERSON IN MANAGEMENT WAS PRESENT OR IN THE VICINITY. AS SOON AS THE ACT WAS COMPLETED, CATFORD GATHERED UP THE PAPER AND WENT ON TO THE NEXT EMPLOYEE.

IN THESE CIRCUMSTANCES, WE DO NOT SEE HOW THE FACT THAT CATFORD DIDN'T ACTUALLY WATCH THE SIGNATURE BEING AFFIXED TO THE DOCUMENTS CAN MAKE THE SLIGHTEST DIFFERENCE TO THE WEIGHT WHICH SHOULD ATTACH TO THOSE DOCUMENTS. IT MUST NOT BE FORGOTTEN THAT EACH OF THE SIGNATURES HAS BEEN CAREFULLY COMPARED WITH SPECIMEN SIGNATURES SUBMITTED BY THE COMPANY AND NO QUESTION ARISES AS TO THE IDENTITY OF THE PERSONS SIGNING. NOR DO WE DELIEVE THAT IN SO HOLDING, WE ARE IN ANY WAY DEPARTING FROM ANY PREVIOUS BOARD RULINGS ON THIS SUBJECT.

THE MAJORITY OF THE BOARD CONCLUDED THAT THERE WAS NO EMPLOYER INFLUENCE, AND A REPRESENTATION VOTE WAS ORDERED. REFERENCE MAY ALSO BE MADE TO THE CANADIAN GENERAL ELECTRIC COMPANY CASE, 61 C.L.L.C. 911.

5. IN THE INSTANT CASE, OF COURSE, THE SIGNATURES APPEARING ON THE DOCUMENTS HAVE BEEN SCRUTINIZED IN THE USUAL WAY BY THE BOARD'S CLERKS AND COMPARED WITH SPECIMENT SIGNATURES SUBMITTED BY THE RESPONDENT IN ACCORDANCE WITH THE BOARD'S DIRECTION.

6. HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF PITNEY-BOWES OF CANADA LIMITED IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

7. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF PITNEY-BOWES OF CANADA LIMITED AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND SERVICE STAFF, OFFICE STAFF AND PLANT GUARDS, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.



8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: MARCH 29, 1967.

I DISSENT.

WHILE I DO NOT DISPUTE THE FACTS OUTLINED BY THE MAJORITY IN THEIR DECISION, ON THE BASIS OF ALL THE EVIDENCE BEFORE ME I WOULD HAVE DISMISSED THE APPLICATION. MAY I ALSO POINT OUT THE MINORITY DECISION OF PYROTENAX OF CANADA LTD. CASE, 60 C.L.L.C. 65. I SUPPORT MY COLLEAGUE D. B. ARCHER, WHERE HE SAYS:

IT HAS BEEN THE INVARIABLE PRACTICE OF THE BOARD IN CERTIFICATION CASES TO REQUIRE AN ORIGINAL SIGNATURE, THE NAME OF A WITNESS WHO CAN STATE OF HIS OR HER OWN KNOWLEDGE THAT THE NECESSARY MONEY WAS PAID, AND, AS AN ADDED PRECAUTION, THE COUNTER SIGNATURE OF THE ORIGINAL EMPLOYEE STATING THAT HE PAID THE MONEY. IN THE CASE OF APPLICANTS FOR TERMINATION OF BARGAINING RIGHTS, THE BOARD HAS DEMANDED FIRST-HAND INFORMATION AS TO THE ORIGIN OF THE EVIDENCE BEING USED FOR THE TERMINATION PROCEEDINGS AND A GUARANTEE THAT EACH SIGNATURE HAS BEEN WITNESSED. I DO NOT THINK, IN VIEW OF THE HEAVY ONUS WE PLACE ON APPLICANT UNIONS, WE SHOULD RELAX OUR PROCEDURES IN TERMINATION CASES. I DO NOT BELIEVE IN THIS CASE THE APPLICANT CAN IDENTIFY TO THE BOARD'S SATISFACTION THE SIGNATURES ON THE BALLOTS.

12852-66-R: THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND R. W. TEAGLE.

APPEARANCES AT HEARING: W. M. MAYNE, G. RIMMER AND S. D. BOWMAN FOR THE APPLICANT, A. BEKERMANN AND J. SULLIVAN FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 29, 1967.

1. THE APPLICANT IS APPLYING TO THE BOARD PURSUANT TO SECTION 45 OF THE ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THE RESPONDENT WAS CERTIFIED BY THE BOARD FOR A UNIT OF EMPLOYEES OF THE RESPONDENT ON OCTOBER 26TH, 1966. THE RESPONDENT GAVE TO THE APPLICANT WRITTEN NOTICE OF ITS DESIRE TO BARGAIN ON OCTOBER 28TH, 1966 AND THE PARTIES HELD TWO BARGAINING SESSIONS ON NOVEMBER 23RD, 1966 AND DECEMBER 7TH, 1966.

BY LETTER DATED JANUARY 3RD, 1967, THE APPLICANT SENT TO THE RESPONDENT A DRAFT OF A PROPOSED COLLECTIVE AGREEMENT FOR ITS PERUSAL. THE RESPONDENT HAS NOT COMMUNICATED WITH THE APPLICANT BETWEEN THAT TIME AND THE DATE OF THE MAKING OF THE INSTANT APPLICATION ON MARCH 14TH, 1967.

3. THE RESPONDENT HAS ALLOWED A PERIOD OF OVER SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN WITH THE APPLICANT. THE BOARD ACCORDINGLY PURSUANT TO SECTION 45(2) OF THE ACT. DIRECTS THAT A REPRESENTATION VOTE BE TAKEN IN THIS MATTER IN ORDER TO ASCERTAIN THE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE OF OCTOBER 26TH, 1966, BEING ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER.

4. ALL EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

5. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

6. THE MATTER IS REFERRED TO THE REGISTRAR.

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MATTER

1296-60-1: THE RESILIENT FLOORING CONTRACTORS ASSOCIATION OF ONTARIO (TORONTO SECTION) (APPLICANT) v. THE RESILIENT FLOOR WORKERS UNION, LOCAL 2965, CONFEDERATION OF NATIONAL TRADE UNIONS (RESPONDENT, v. LOCAL UNION NO. 2965, OF TORONTO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ALSO KNOWN AS LOCAL 2965, THE RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O. (PREDECESSOR TRADE UNION)).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND R. W. TEAGLE.

APPEARANCES AT HEARING: B. W. BINNING, A. BUCHANAN, L. KNIGHT AND BRIAN TAYLOR FOR THE APPLICANT, IAN G. SCOTT, MICHAEL SCANLON, T. S. PAYNE, ROBERT BURNS, J. A. RYDER AND C. MASSON FOR THE RESPONDENT, AND T. E. ARMSTRONG AND W. STEFANOVITCH FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: MARCH 17, 1967.

1. AT THE HEARING IN THIS MATTER ON MARCH 16TH, 1967, COUNSEL FOR ALL PARTIES CONSENTED BOTH TO THE JURISDICTION OF THE BOARD TO MAKE A DECLARATION PURSUANT TO SECTION 47 OF THE LABOUR RELATIONS ACT AND TO THE BOARD'S MAKING THE DECLARATION SET OUT IN THE FOLLOWING PARAGRAPH. THE BOARD HAS MADE NO DETERMINATION ON THE MERITS OF ANY QUESTION ARISING UNDER SECTION 47, INCLUDING ANY QUESTION RELATING TO THE BOARD'S JURISDICTION.

2. ON THE CONSENT OF COUNSEL, THE BOARD DECLARES THAT THE RESPONDENT IN THIS MATTER, DESCRIBED IN THE STYLE OF CAUSE OF THIS APPLICATION AS "THE RESILIENT FLOOR WORKERS UNION, LOCAL 2965, CONFEDERATION OF NATIONAL TRADE UNION", HAS NOT ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THE LABOUR RELATIONS ACT OF LOCAL UNION No. 2965, OF TORONTO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ALSO KNOWN AS LOCAL 2965, THE RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O.

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

12569-66-U. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. JOHN WINKLER (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: B. H. STEWART, W. CHENERY AND W. O. CHAMBERS FOR THE APPLICANT, AND AUBREY E. GOLDEN AND S. B. LINDEN FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:

MARCH 2, 1967.

1. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENT DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING CONTRAVENE SECTION 52 OF THE LABOUR RELATIONS ACT, IN THAT ON OR ABOUT THE 7TH DAY OF DECEMBER, 1966, AND ON OR ABOUT THE 8TH DAY OF DECEMBER, 1966, THE RESPONDENT DID SEEK, BY THREAT OF FINE CONSTITUTING INTIMIDATION OR COERCION, TO COMPEL EMPLOYEES OF THE APPLICANT FROM PERFORMING THEIR OBLIGATIONS UNDER THE LABOUR RELATIONS ACT.

2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENT DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT, IN THAT ON OR ABOUT DECEMBER 7TH, 1966, AND THEREAFTER THE RESPONDENT SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE.

3. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENT DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING CONTRAVENE SECTION 57 OF THE LABOUR RELATIONS ACT, IN THAT ON OR ABOUT THE 14TH DAY OF DECEMBER 1966, AND ON OR ABOUT THE 16TH DAY OF DECEMBER, 1966, HE DID ACTS WHICH HE KNEW OR OUGHT TO HAVE KNOWN WOULD CAUSE PERSONS TO ENGAGE IN AN UNLAWFUL STRIKE.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER E. BOYER: MARCH 2, 1967.

I DISSENT. I WOULD EXERCISE THE BOARD'S DISCRETION TO REFUSE CONSENT TO PROSECUTE.

WHILE IT IS TRUE THAT THE APPLICANT DID INSTITUTE AND CARRY OUT A SAFETY PROGRAM, ITS METHOD OF IMPLEMENTATION WAS UNFORTUNATELY ILL-ADVISED, IN THAT SAFETY REGULATIONS WERE ESTABLISHED AND ENFORCED BY MANAGEMENT THROUGH ITS SAFETY OFFICER WITH THE MINIMUM OF PARTICIPATION BY THE EMPLOYEES OR THEIR REPRESENTATIVES. HENCE, THE PROGRAM REACHED THE EMPLOYEES MAINLY IN THE FORM OF RULES AND RESTRICTIONS IMPOSED UPON THEM IN A HIGH HANDED AND DICTATORIAL MANNER.

THE ATTITUDE OF MANAGEMENT WAS MANIFESTED IN FEATURES THAT COULD NOT HELP BUT BUILD ANIMOSITY AND RESENTMENT AMONG EMPLOYEES AND DETRIMENTALLY AFFECT LABOUR RELATIONS. FOR EXAMPLE, AN EMPLOYEE OR GROUP OF EMPLOYEES WHO HAD CRITICISMS OR SUGGESTIONS WITH REGARD TO SAFETY COULD NOT PRESENT THESE TO ANY COMMITTEE, BUT ONLY TO THE FOREMAN ON THE JOB OR AT THE WEEKLY "TAKE FIVE" MEETING IN THE SAME MANNER AS ANY OTHER COMPLAINT. THE NATURAL RELUCTANCE OF EMPLOYEES TO RISK THE HOSTILITY OF THE FOREMAN BY REPEATED COMPLAINTS TENDED TO DISCOURAGE SUCH REPRESENTATIONS.

IN THE REPORT OF THE ROYAL COMMISSION ON INDUSTRIAL SAFETY (THE McANDREW COMMISSION) (1961) THE COMMISSION STATED AT PAGE 16:

THE FACT IS THAT A SAFETY PROGRAM BASED SOLELY ON REGULATIONS, SLOGANS, POSTERS AND POLICING BY INSPECTORS, LEAVES SOMETHING TO BE DESIRED, AND THAT SOMETHING IS TO MAKE SAFETY A PERSONAL PROBLEM TO THE EMPLOYEES ON THE JOB AND THEREBY GENERATE AN ATTITUDE THAT MAKES THE EMPLOYEE A STERN POLICEMAN OF HIMSELF AND HIS FELLOW-EMPLOYEES. THIS CANNOT BE ACHIEVED SO LONG AS HE REGARDS THE SAFETY PROGRAM AS SOMETHING IMPOSED UPON HIM BY MANAGEMENT.

BY IGNORING THE COMMISSION'S WARNING, MANAGEMENT IN THE INSTANT CASE IMPAIRED THE EFFECT OF THE SAFETY PROGRAM AND CAUSED A GENERAL DETERIORATION IN ITS RELATIONS WITH ITS EMPLOYEES. ACCORDINGLY, ALTHOUGH THERE MAY BE EVIDENCE IN SUPPORT OF THE ALLEGATION THAT THE RESPONDENT HAS VIOLATED THE ACT, THE BOARD, IN EXERCISING ITS DISCRETION, SHOULD NOTE AS WELL THE PROVOCATION BY THE APPLICANT. I WOULD REFUSE CONSENT TO PROSECUTE.

12570-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) v. JOHN TRESSIDER (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: B. H. STEWART, W. CHENERY AND W. O. CHAMBERS FOR THE APPLICANT, AND AUBREY E. GOLDEN AND S. B. LINDEN FOR THE RESPONDENT.



DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:

MARCH 2, 1967.

1. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENT DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT, IN THAT ON OR ABOUT THE 12TH DAY OF DECEMBER, 1966, HE DID SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE.
2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENT DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING CONTRAVENE SECTION 57 OF THE LABOUR RELATIONS ACT, IN THAT ON OR ABOUT THE 14TH DAY OF DECEMBER, 1966, HE DID AN ACT WHICH HE KNEW OR OUGHT TO HAVE KNOWN WOULD CAUSE PERSONS TO ENGAGE IN AN UNLAWFUL STRIKE.
3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER E. BOYER:

MARCH 2, 1967.

I DISSENT. I WOULD EXERCISE THE BOARD'S DISCRETION AND REFUSE CONSENT TO PROSECUTE.

WHILE IT IS TRUE THAT THE APPLICANT DID INSTITUTE AND CARRY OUT A SAFETY PROGRAM, ITS METHOD OF IMPLEMENTATION WAS UNFORTUNATELY ILL-ADVISED, IN THAT SAFETY REGULATIONS WERE ESTABLISHED AND ENFORCED BY MANAGEMENT THROUGH ITS SAFETY OFFICER WITH THE MINIMUM OF PARTICIPATION BY THE EMPLOYEES OR THEIR REPRESENTATIVES. HENCE, THE PROGRAM REACHED THE EMPLOYEES MAINLY IN THE FORM OF RULES AND RESTRICTIONS IMPOSED UPON THEM IN A HIGH HANDED AND DICTATORIAL MANNER.

THE ATTITUDE OF MANAGEMENT WAS MANIFESTED IN FEATURES THAT COULD NOT HELP BUT BUILD UP ANIMOSITY AND RESENTMENT AMONG EMPLOYEES AND DETRIMENTALLY AFFECT LABOUR RELATIONS. FOR EXAMPLE, AN EMPLOYEE OR GROUP OF EMPLOYEES WHO HAD CRITICISMS OR SUGGESTIONS WITH REGARD TO SAFETY COULD NOT PRESENT THESE TO ANY COMMITTEE, BUT ONLY TO THE FOREMAN ON THE JOB OR AT THE WEEKLY "TAKE FIVE" MEETING IN THE SAME MANNER AS ANY OTHER COMPLAINT. THE NATURAL RELUCTANCE OF EMPLOYEES TO RISK THE HOSTILITY OF THE FOREMAN BY REPEATED COMPLAINTS TENDED TO DISCOURAGE SUCH REPRESENTATIONS.

IN THE REPORT OF THE ROYAL COMMISSION ON INDUSTRIAL SAFETY (THE McANDREW COMMISSION) (1961) THE COMMISSION STATED AT PAGE 16:

THE FACT IS THAT A SAFETY PROGRAM BASED SOLELY ON REGULATIONS, SLOGANS, POSTERS AND POLICING BY INSPECTORS, LEAVES SOMETHING TO BE DESIRED, AND THAT SOMETHING IS TO MAKE SAFETY A PERSONAL PROBLEM TO THE EMPLOYEES ON THE JOB AND THEREBY GENERATE AN ATTITUDE THAT MAKES THE EMPLOYEE A STERN POLICEMAN OF HIMSELF AND HIS FELLOW-EMPLOYEES.

THIS CANNOT BE ACHIEVED SO LONG AS HE REGARDS  
THE SAFETY PROGRAM AS SOMETHING IMPOSED UPON HIM  
BY MANAGEMENT.

BY IGNORING THE COMMISSION'S WARNING, MANAGEMENT IN THE INSTANT  
CASE IMPAIRED THE EFFECT OF THE SAFETY PROGRAM AND CAUSED A GENERAL  
DETERIORATION IN ITS RELATIONS WITH ITS EMPLOYEES. ACCORDINGLY,  
ALTHOUGH THERE MAY BE EVIDENCE IN SUPPORT OF THE ALLEGATION THAT THE  
RESPONDENT HAS VIOLATED THE ACT, THE BOARD, IN EXERCISING ITS DISCRETION,  
SHOULD NOTE AS WELL THE PROVOCATION BY THE APPLICANT. I WOULD REFUSE  
CONSENT TO PROSECUTE.

12571-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V.  
THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON-  
WORKERS AND LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL  
AND ORNAMENTAL IRONWORKERS (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: B. H. STEWART, W. CHENERY AND W. O. CHAMBERS  
FOR THE APPLICANT, AND S. L. ROBINS, R. KOSKIE AND S. B. LINDEN FOR  
THE RESPONDENTS.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
H. F. IRWIN: MARCH 2, 1967.

1. AT THE COMMENCEMENT OF THE HEARING OF THIS MATTER, COUNSEL FOR  
THE APPLICANT, WITH THE CONSENT OF THE BOARD, WITHDREW ITS APPLICATION  
FOR CONSENT TO PROSECUTE THE INTERNATIONAL ASSOCIATION OF BRIDGE,  
STRUCTURAL AND ORNAMENTAL IRONWORKERS. THE APPLICATION, INsofar AS IT  
RELATES TO THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND  
ORNAMENTAL IRONWORKERS, IS THEREFORE DISMISSED.
2. THE BOARD FINDS THAT THE EVIDENCE TENDERED WITH RESPECT TO THE  
INCIDENTS WHICH OCCURRED AT THE APPLICANT'S LAKEVIEW GENERATING STATION  
COMMENCING ABOUT THE 9TH AND 23RD DAYS OF DECEMBER, 1966, DOES NOT  
WARRANT THE GRANTING OF CONSENT TO THE INSTITUTION OF A PROSECUTION  
AGAINST THE RESPONDENT, LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, FOR AN OFFENCE UNDER  
SECTION 55 OF THE ACT WITH RELATION TO THE INSTANCES AT THAT PLACE.  
THE APPLICATION INsofar AS IT REFERS TO THE INCIDENTS AT THE LAKEVIEW  
GENERATING STATION IS THEREFORE DISMISSED.
3. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE  
RESPONDENT, LOCAL 721, OF THE INTERNATIONAL ASSOCIATION OF BRIDGE,  
STRUCTURAL AND ORNAMENTAL IRONWORKERS, FOR THE FOLLOWING OFFENCE ALLEGED  
TO HAVE BEEN COMMITTED: THAT THE RESPONDENT DID AT THE APPLICANT'S  
PICKERING PROJECT AT PICKERING CONTRAVENE SECTION 55 OF THE LABOUR  
RELATIONS ACT, IN THAT COMMENCING ON THE 7TH DAY OF DECEMBER, 1966, AND  
THEREAFTER THE RESPONDENT AUTHORIZED AN UNLAWFUL STRIKE.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER E. BOYER: MARCH 2, 1967.

I DISSENT. I WOULD EXERCISE THE BOARD'S DISCRETION AND REFUSE CONSENT TO PROSECUTE.

WHILE IT IS TRUE THAT THE APPLICANT DID INSTITUTE AND CARRY OUT A SAFETY PROGRAM, ITS METHOD OF IMPLEMENTATION WAS UNFORTUNATELY ILL-ADVISED, IN THAT SAFETY REGULATIONS WERE ESTABLISHED AND ENFORCED BY MANAGEMENT THROUGH ITS SAFETY OFFICER WITH THE MINIMUM OF PARTICIPATION BY THE EMPLOYEES OR THEIR REPRESENTATIVES. HENCE, THE PROGRAM REACHED THE EMPLOYEES MAINLY IN THE FORM OF RULES AND RESTRICTIONS IMPOSED UPON THEM IN A HIGH HANDED AND DICTATORIAL MANNER.

THE ATTITUDE OF MANAGEMENT WAS MANIFESTED IN FEATURES THAT COULD NOT HELP BUT BUILD UP ANIMOSITY AND RESENTMENT AMONG EMPLOYEES AND DETRIMENTALLY AFFECT LABOUR RELATIONS. FOR EXAMPLE, AN EMPLOYEE OR GROUP OF EMPLOYEES WHO HAD CRITICISMS OR SUGGESTIONS WITH REGARD TO SAFETY COULD NOT PRESENT THESE TO ANY COMMITTEE, BUT ONLY TO THE FOREMAN ON THE JOB OR AT THE WEEKLY "TAKE FIVE" MEETING IN THE SAME MANNER AS ANY OTHER COMPLAINT. THE NATURAL RELUCTANCE OF EMPLOYEES TO RISK THE HOSTILITY OF THE FOREMAN BY REPEATED COMPLAINTS TENDED TO DISCOURAGE SUCH REPRESENTATIONS.

IN THE REPORT OF THE ROYAL COMMISSION ON INDUSTRIAL SAFETY (THE McANDREW COMMISSION) (1961) THE COMMISSION STATED AT PAGE 16:

THE FACT IS THAT A SAFETY PROGRAM BASED SOLELY ON REGULATIONS, SLOGANS, POSTERS AND POLICING BY INSPECTORS, LEAVES SOMETHING TO BE DESIRED, AND THAT SOMETHING IS TO MAKE SAFETY A PERSONAL PROBLEM TO THE EMPLOYEES ON THE JOB AND THEREBY GENERATE AN ATTITUDE THAT MAKES THE EMPLOYEE A STERN POLICEMAN OF HIMSELF AND HIS FELLOW-EMPLOYEES. THIS CANNOT BE ACHIEVED SO LONG AS HE REGARDS THE SAFETY PROGRAM AS SOMETHING IMPOSED UPON HIM BY MANAGEMENT.

BY IGNORING THE COMMISSION'S WARNING, MANAGEMENT IN THE INSTANT CASE IMPAIRED THE EFFECT OF THE SAFETY PROGRAM AND CAUSED A GENERAL DETERIORATION IN ITS RELATIONS WITH ITS EMPLOYEES. ACCORDINGLY, ALTHOUGH THERE MAY BE EVIDENCE IN SUPPORT OF THE ALLEGATION THAT THE RESPONDENT HAS VIOLATED THE ACT, THE BOARD IN EXERCISING ITS DISCRETION, SHOULD NOTE AS WELL THE PROVOCATION BY THE APPLICANT. I WOULD REFUSE CONSENT TO PROSECUTE.

12572-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. ERIC BOLAN, LEN HERBERT, NEWMAN VINCENT, LLOYD HUSSELL, WILLIAM CORBETT, WILLIAM WEBER (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER'S  
E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: B. H. STEWART, W. CHENERY AND W. O. CHAMBERS  
FOR THE APPLICANT AND AUBREY E. GOLDEN AND S. B. LINDEN FOR THE  
RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
H. R. IRWIN: MARCH 2, 1967.

1. THE BOARD FINDS AND COUNSEL FOR THE APPLICANT CONCEDES THAT NO CASE  
HAS BEEN MADE OUT WITH RESPECT TO THE RESPONDENT BENJAMIN VINCENT. THE  
APPLICATION INsofar AS IT REFERS TO BENJAMIN VINCENT IS THEREFORE DISMISSED.

2. THE BOARD CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE  
RESPONDENT, DENIS DELANEY, LEO HEBERT, LLOYD KINSELLA, WILLIAM CORBETT,  
WILLIAM WEBBER, FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:  
THAT THE SAID RESPONDENTS DID AT THE APPLICANT'S PICKERING PROJECT AT  
PICKERING CONTRAVENE SECTION 57 OF THE LABOUR RELATIONS ACT, IN THAT ON OR  
ABOUT THE 14TH DAY OF DECEMBER, 1966, THEY DID ACTS WHICH THEY KNEW OR  
OUGHT TO HAVE KNOWN WOULD CAUSE PERSONS TO ENGAGE IN AN UNLAWFUL STRIKE.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER E. BOYER: MARCH 2, 1967.

I DISSENT. I WOULD EXERCISE THE BOARD'S DISCRETION AND REFUSE  
CONSENT TO PROSECUTE.

WHILE IT IS TRUE THAT THE APPLICANT DID INSTITUTE AND CARRY OUT A  
SAFETY PROGRAM ITS METHOD OF IMPLEMENTATION WAS UNFORTUNATELY ILL-ADVISED,  
IN THAT SAFETY REGULATIONS WERE ESTABLISHED AND ENFORCED BY MANAGEMENT  
THROUGH ITS SAFETY OFFICER WITH THE MINIMUM OF PARTICIPATION BY THE  
EMPLOYEES OR THEIR REPRESENTATIVES. HENCE, THE PROGRAM REACHED THE  
EMPLOYEES MAINLY IN THE FORM OF RULES AND RESTRICTIONS IMPOSED UPON THEM  
IN A HIGH HANDED AND DICTATORIAL MANNER.

THE ATTITUDE OF MANAGEMENT WAS MANIFESTED IN FEATURES THAT COULD NOT  
HELP BUT BUILD UP ANIMOSITY AND RESENTMENT AMONG EMPLOYEES AND DETRIMENTALLY  
AFFECT LABOUR RELATIONS. FOR EXAMPLE, AN EMPLOYEE OR GROUP OF EMPLOYEES WHO  
HAD CRITICISMS OR SUGGESTIONS WITH REGARD TO SAFETY COULD NOT PRESENT THESE  
TO ANY COMMITTEE, BUT ONLY TO THE FOREMAN ON THE JOB OR AT THE WEEKLY "TAKE  
FIVE" MEETING IN THE SAME MANNER AS ANY OTHER COMPLAINT. THE NATURAL RELUC-  
TANCE OF EMPLOYEES TO RISK THE HOSTILITY OF THE FOREMAN BY REPEATED COM-  
PLAINTS TENDED TO DISCOURAGE SUCH REPRESENTATIONS.

IN THE REPORT OF THE ROYAL COMMISSION ON INDUSTRIAL SAFETY (THE  
McANDREW COMMISSION) (1961) THE COMMISSION STATED AT PAGE 16:

THE FACT IS THAT A SAFETY PROGRAM BASED  
SOLELY ON REGULATIONS, SLOGANS, POSTERS AND POLICING  
BY INSPECTORS, LEAVES SOMETHING TO BE DESIRED, AND  
THAT SOMETHING IS TO MAKE SAFETY A PERSONAL PROBLEM  
TO THE EMPLOYEES ON THE JOB AND THEREBY GENERATE



AN ATTITUDE THAT MAKES THE EMPLOYEE A STERN POLICEMENT OF HIMSELF AND HIS FEELOW-EMPLOYEES. THIS CANNOT BE ACHIEVED SO LONG AS HE REGARDS THE SAFETY PROGRAM AS SOMETHING IMPOSED UPON HIM BY MANAGEMENT.

BY IGNORING THE COMMISSION'S WARNING, MANAGEMENT IN THE INSTANT CASE IMPAIRED THE EFFECT OF THE SAFETY PROGRAM AND CAUSED A GENERAL DETERIORATION IN ITS RELATIONS WITH ITS EMPLOYEES. ACCORDINGLY, ALTHOUGH THERE MAY BE EVIDENCE IN SUPPORT OF THE ALLEGATION THAT THE RESPONDENTS HAVE VIOLATED THE ACT, THE BOARD, IN EXERCISING ITS DISCRETION, SHOULD NOTE AS WELL THE PROVOCATION BY THE APPLICANT. I WOULD REFUSE CONSENT TO PROSECUTE.

12573-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. CHESLEY YETMAN (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: B. H. STEWART, W. CHENERY AND W. O. CHAMBERS FOR THE APPLICANT; AND AUBREY E. GOLDEN AND S. B. LINDEN FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: MARCH 2, 1967.

1. THERE IS NO EVIDENCE BEFORE THE BOARD UPON WHICH IT IS PREPARED TO CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR A CONTRAVENTION OF SECTION 52 OF THE LABOUR RELATIONS ACT AND THE APPLICATION INsofar AS THAT SECTION IS CONCERNED IS DISMISSED.
2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE SAID RESPONDENT DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT, IN THAT ON OR ABOUT THE 7TH DAY OF DECEMBER, 1966, AND THEREAFTER THE RESPONDENT DID SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE.
3. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENT DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING CONTRAVENE SECTION 57 OF THE LABOUR RELATIONS ACT, IN THAT ON OR ABOUT THE 14TH DAY OF DECEMBER, 1966, THE RESPONDENT DID AN ACT WHICH HE KNEW OR OUGHT TO HAVE KNOWN WOULD CAUSE PERSONS TO ENGAGE IN AN UNLAWFUL STRIKE.
4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER E. BOYER: MARCH 2, 1967.

I DISSENT. I WOULD EXERCISE THE BOARD'S DISCRETION AND REFUSE CONSENT TO PROSECUTE.

WHILE IT IS TRUE THAT THE APPLICANT DID INSTITUTE AND CARRY OUT A SAFETY PROGRAM, ITS METHOD OF IMPLEMENTATION WAS UNFORTUNATELY ILL-ADVISED, IN THAT SAFETY REGULATIONS WERE ESTABLISHED AND ENFORCED BY MANAGEMENT THROUGH ITS SAFETY OFFICER WITH THE MINIMUM OF PARTICIPATION BY THE EMPLOYEES OR THEIR REPRESENTATIVES. HENCE, THE PROGRAM REACHED THE EMPLOYEES MAINLY IN THE FORM OF RULES AND RESTRICTIONS IMPOSED UPON THEM IN A HIGH HANDED AND DICTATORIAL MANNER.

THE ATTITUDE OF MANAGEMENT WAS MANIFESTED IN FEATURES THAT COULD NOT HELP BUT BUILD UP ANIMOSITY AND RESENTMENT AMONG EMPLOYEES AND DETRIMENTALLY AFFECT LABOUR RELATIONS. FOR EXAMPLE, AN EMPLOYEE OR GROUP OF EMPLOYEES WHO HAD CRITICISMS OR SUGGESTIONS WITH REGARD TO SAFETY COULD NOT PRESENT THESE TO ANY COMMITTEE, BUT ONLY TO THE FOREMAN ON THE JOB OR AT THE WEEKLY "TAKE FIVE" MEETING IN THE SAME MANNER AS ANY OTHER COMPLAINT. THE NATURAL RELUCTANCE OF EMPLOYEES TO RISK THE HOSTILITY OF THE FOREMAN BY REPEATED COMPLAINTS TENDED TO DISCOURAGE SUCH REPRESENTATIONS.

IN THE REPORT OF THE ROYAL COMMISSION OF INDUSTRIAL SAFETY (THE McANDREW COMMISSION) (1961) THE COMMISSION STATED AT PAGE 16:

THE FACT IS THAT A SAFETY PROGRAM BASED SOLELY ON REGULATIONS, SLOGANS, POSTERS AND POLICING BY INSPECTORS, LEAVES SOMETHING TO BE DESIRED, AND THAT SOMETHING IS TO MAKE SAFETY A PERSONAL PROBLEM TO THE EMPLOYEES ON THE JOB AND THEREBY GENERATE AN ATTITUDE THAT MAKES THE EMPLOYEE A STERN POLICEMAN OF HIMSELF AND HIS FELLOW-EMPLOYEES. THIS CANNOT BE ACHIEVED SO LONG AS HE REGARDS THE SAFETY PROGRAM AS SOMETHING IMPOSED UPON HIM BY MANAGEMENT.

BY IGNORING THE COMMISSION'S WARNING, MANAGEMENT IN THE INSTANT CASE IMPAIRED THE EFFECT OF THE SAFETY PROGRAM AND CAUSED A GENERAL DETERIORATION IN ITS RELATIONS WITH ITS EMPLOYEES. ACCORDINGLY, ALTHOUGH THERE MAY BE EVIDENCE IN SUPPORT OF THE ALLEGATION THAT THE RESPONDENT HAS VIOLATED THE ACT, THE BOARD, IN EXERCISING ITS DISCRETION, SHOULD NOTE AS WELL THE PROVOCATION BY THE APPLICANT. I WOULD REFUSE CONSENT TO PROSECUTE.

12574-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. BENNY ANDERSON, BERNARD ARSENEAU, BRIAN BEAUMONT, THOMAS BEAUVAIS, BERARD BEGIN, FRANK BERGERON, KLEMENS BEYFUSS, EARL BRANT, MICHAEL BRIDGEMAN, BERNARD BRODERS, SYLVESTER BRODERS, OSCAR BROWN, ROGER BRULE, ROBERT CARPANINI, DOUGLAS COLLIER, R. WILLIAM CORBETT, JOHN COX, RONALD CROSS, THOMAS CRYAN, DOBRIVOJE CVETINOVIC, FRANK DALES, DENIS DELANEY, VICTOR EAST, GEORGE FULTON, LOUIS GALLANT, PETER SAMBLIN, HENRY HARTGERINK, EDMOND HEBERT, LEO HEBERT, STEPHEN HOWARD, WALTER HRAPCHAK, LEO HUARD, GERALD JONES, LLOYD KINSELLA, JOHN KULCHAR, JACQUES LABATT, TENNYA LABATT, HARRY LACROIX, JEAN LA FLEUR, PAUL LEBLANC, LEO LEBLANC, PHILIP MACLENNAN, PALMO MARINO, JOZEF MAZNIK,

JAMES McDONALD, MICHAEL McNULTY, MYRLE McRAE, CHARLES LELANSON, ALEX MEZALS,  
GEORGE MIHALDINECZ, MAXWELL MILLEN, CLIFFORD MONSON, CLARENCE MORIN, DONALD  
MULLINS, DANNY NANOS, FERDINAND PAGE, BEN PENNY, KARL, SR. PRAGER, KARL  
PRAGER, JEAN PAUL RAYMOND, RUSSELL REID, PHIL RICHARDS, JOHN ROBERTSON,  
FRED ROMANO, LYNNEST RUDOLPH, EDMUND SQUISSATO, LOUIS STEUCEL, JAMES TAYLOR,  
RAYMOND THIBODEAU, JOSEPH THOMAS, ANTHONY TRENTIN, RICHARD TROTTER, CYR  
TROTTIER, ALLAN TRAYNOR, THOMAS TURNER, ELMAR VASILIS, BENJAMIN VINCENT,  
WILLIAM WEBBER, DESMOND WELLER, TERRY WETMORE, GEORGE WHITE, JOHN WINKLER,  
CHESLEY YETMAN, HARVEY ZONEY (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: B. H. STEWART, W. CHENERY AND W. O. CHAMBERS FOR  
THE APPLICANT, AND AUBREY E. GOLDEN AND S. B. LINDEN FOR THE RESPONDENTS.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:

MARCH 2, 1967.

1. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE  
RESPONDENTS FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT  
THE RESPONDENTS DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING  
CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT, IN THAT COMMENCING ON OR  
ABOUT THE 7TH AND 8TH DAYS OF DECEMBER, 1966, AND THEREAFTER THE RESPONDENTS  
ENGAGED IN AN UNLAWFUL STRIKE.

2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE  
RESPONDENTS FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:  
THAT THE RESPONDENTS DID AT THE APPLICANT'S PICKERING PROJECT AT PICKERING  
CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT, IN THAT COMMENCING ON  
OR ABOUT THE 16TH DAY OF DECEMBER, 1966, AND THEREAFTER THE RESPONDENTS  
ENGAGED IN AN UNLAWFUL STRIKE.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER E. BOYER: MARCH 2, 1967.

I DISSENT. I WOULD EXERCISE THE BOARD'S DISCRETION AND REFUSE CONSENT  
TO PROSECUTE.

WHILE IT IS TRUE THAT THE APPLICANT DID INSTITUTE AND CARRY OUT A  
SAFETY PROGRAM, ITS METHOD OF IMPLEMENTATION WAS UNFORTUNATELY ILL-ADVISED,  
IN THAT SAFETY REGULATIONS WERE ESTABLISHED AND ENFORCED BY MANAGEMENT THROUGH  
ITS SAFETY OFFICER WITH THE MINIMUM OF PARTICIPATION BY THE EMPLOYEES OR THEIR  
REPRESENTATIVES. HENCE, THE PROGRAM REACHED THE EMPLOYEES MAINLY IN THE FORM  
OF RULES AND RESTRICTIONS IMPOSED UPON THEM IN A HIGH HANDED AND DICTATORIAL  
MANNER.

THE ATTITUDE OF MANAGEMENT WAS MANIFESTED IN FEATURES THAT COULD NOT HELP BUT BUILD UP ANIMOSITY AND RESENTMENT AMONG EMPLOYEES AND DETRIMENTALLY AFFECT LABOUR RELATIONS. FOR EXAMPLE, AN EMPLOYEE OR GROUP OF EMPLOYEES WHO HAD CRITICISMS OR SUGGESTIONS WITH REGARD TO SAFETY COULD NOT PRESENT THESE TO ANY COMMITTEE, BUT ONLY TO THE FOREMAN ON THE JOB OR AT THE WEEKLY "TAKE FIVE" MEETING IN THE SAME MANNER AS ANY OTHER COMPLAINT. THE NATURAL RELUCTANCE OF EMPLOYEES TO RISK THE HOSTILITY OF THE FOREMAN BY REPEATED COMPLAINTS TENDED TO DISCOURAGE SUCH REPRESENTATIONS.

IN THE REPORT OF THE ROYAL COMMISSION ON INDUSTRIAL SAFETY (THE McANDREW COMMISSION) (1961) THE COMMISSION STATED AT PAGE 16:

THE FACT IS THAT A SAFETY PROGRAM BASED SOLELY ON REGULATIONS, SLOGANS, POSTERS AND POLICING BY INSPECTORS, LEAVES SOMETHING TO BE DESIRED, AND THAT SOMETHING IS TO MAKE SAFETY A PERSONAL PROBLEM TO THE EMPLOYEES ON THE JOB AND THEREBY GENERATE AN ATTITUDE THAT MAKES THE EMPLOYEE A STERN POLICEMAN OF HIMSELF AND HIS FELLOW-EMPLOYEES. THIS CANNOT BE ACHIEVED SO LONG AS HE REGARDS THE SAFETY PROGRAM AS SOMETHING IMPOSED UPON HIM BY MANAGEMENT.

BY IGNORING THE COMMISSION'S WARNING, MANAGEMENT IN THE INSTANT CASE IMPAIRED THE EFFECT OF THE SAFETY PROGRAM AND CAUSED A GENERAL DETERIORATION ON ITS RELATIONS WITH ITS EMPLOYEES. ACCORDINGLY, ALTHOUGH THERE MAY BE EVIDENCE IN SUPPORT OF THE ALLEGATION THAT THE RESPONDENTS HAVE VIOLATED THE ACT, THE BOARD, IN EXERCISING ITS DISCRETION, SHOULD NOTE WELL THE PROVOCATION BY THE APPLICANT. I WOULD REFUSE CONSENT TO PROSECUTE.

12576-66-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. KARL ABRAMOWITZ, HENRICUS AKEBOOM, HALBERT ALLISON, JOJO ANTUNE, WESLEY BAUMHOOR, ERNST J. BERTIN, NOAH BEST, HARRY BIFFER, GIUSEPPE BOGATTO, ERNEST BROWN, ERNEST GEORGE BURTON, PETER CLABBY, HAROLD COOMBS, WILLIAM HARRY COOMES, ALBERT JIME GAUTHIER, ROY STACEY GREEN, NORMAN E. HALE, OCTIS HALL, MICHAEL HYDE, JOHN JANSEN, ALBERT JOY, PIERRE GILBERT JUNGAS, NORMAN JOSEPH KENNEDY, LUDWIK LIELAR, ANTONIO D. KOSTANYEVEC, ALWYN PERCY LANE, JOHN ANTHONY LEWIS, JAMES MCCANN, GINO MICELLI, FLORENT FRANCO MOORTGAT, AARON MURPHY, WILLIAM MURPHY, LESLIE CHARLES NEWMAN, JOSEPH PATRICK OGAR, DAVID O'KEEFE, LAWRENCE PASSEK, LUDGER PHILLIPS, GERARD POIRIER, JOSEPH C. ST. ANDREWS, HOST SCHAB, BARRIE SOLES, WILHELM STEGER, HAYWARD THOMAS, ROBERT OWEN THOMAS (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: B. H. STEWART, W. CHENERY AND W. O CHAMBERS FOR THE APPLICANT, AND AUBREY E. GOLDEN AND S. B. LINDEN FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER I. F. IRWIN.

MARCH 2, 1967.



1. AT THE REQUEST OF THE APPLICANT, WITH THE CONSENT OF THE BOARD AND THE CONCURRENCE OF COUNSEL FOR THE RESPONDENTS, THE APPLICATION WAS WITHDRAWN INSOFAR AS IT CONCERNED HOST SCHAB, AND HE IS NOT A RESPONDENT IN THESE PROCEEDINGS.
2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENTS DID AT THE APPLICANT'S LAKEVIEW GENERATING STATION CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT, IN THAT COMMENCING ON OR ABOUT THE 9TH DAY OF DECEMBER, 1966, THEY ENGAGED IN AN UNLAWFUL STRIKE.
3. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENTS DID AT THE APPLICANT'S LAKEVIEW GENERATING STATION CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT, IN THAT COMMENCING ON OR ABOUT THE 23RD DAY OF DECEMBER, 1966, THEY ENGAGED IN AN UNLAWFUL STRIKE.
4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER E. BOYER: MARCH 2, 1967.

I DISSENT. I WOULD EXERCISE THE BOARD'S DISCRETION AND REFUSE CONSENT TO PROSECUTE.

WHILE IT IS TRUE THAT THE APPLICANT DID INSTITUTE AND CARRY OUT A SAFETY PROGRAM, ITS METHOD OF IMPLEMENTATION WAS UNFORTUNATELY ILL-ADVISED, IN THAT SAFETY REGULATIONS WERE ESTABLISHED AND ENFORCED BY MANAGEMENT THROUGHOUT ITS SAFETY OFFICER WITH THE MINIMUM OF PARTICIPATION BY THE EMPLOYEES OR THEIR REPRESENTATIVES. HENCE, THE PROGRAM REACHED THE EMPLOYEES MAINLY IN THE FORM OF RULES AND RESTRICTIONS IMPOSED UPON THEM IN A HIGH HANDED AND DICTATORIAL MANNER.

THE ATTITUDE OF MANAGEMENT WAS MANIFESTED IN FEATURES THAT COULD NOT HELP BUT BUILD UP ANIMOSITY AND RESENTMENT AMONG EMPLOYEES AND DETRIMENTALLY AFFECT LABOUR RELATIONS. FOR EXAMPLE, AN EMPLOYEE OR GROUP OF EMPLOYEES WHO HAD CRITICISMS OR SUGGESTIONS WITH REGARD TO SAFETY COULD NOT PRESENT THESE TO ANY COMMITTEE, BUT ONLY TO THE FOREMAN ON THE JOB OR AT THE WEEKLY "TAKE FIVE" MEETING IN THE SAME MANNER AS ANY OTHER COMPLAINT. THE NATURAL RELUCTANCE OF EMPLOYEES TO RISK THE HOSTILITY OF THE FOREMAN BY REPEATED COMPLAINTS TENDED TO DISCOURAGE SUCH REPRESENTATIONS.

IN THE REPORT OF THE ROYAL COMMISSION ON INDUSTRIAL SAFETY (THE McANDREW COMMISSION) (1961) THE COMMISSION STATED AT PAGE 16:

THE FACT IS THAT A SAFETY PROGRAM BASED SOLELY ON REGULATIONS, SLOGANS, POSTERS AND POLICING BY INSPECTORS, LEAVES SOMETHING TO BE DESIRED, AND THE SOMETHING IS TO MAKE SAFETY A PERSONAL PROBLEM TO THE EMPLOYEES ON THE JOB AND THEREBY GENERATE AN ATTITUDE THAT MAKES THE EMPLOYEE A STERN POLICEMAN OF HIMSELF AND HIS FELLOW-EMPLOYEES. THIS CANNOT BE ACHIEVED SO LONG AS HE REGARDS THE SAFETY PROGRAM AS SOMETHING IMPOSED UPON HIM BY MANAGEMENT.

By ignoring the Commission's warning, management in the instant case impaired the effect of the safety program and caused a general deterioration on its relations with its employees. Accordingly, although there may be evidence in support of the allegation that the respondents have violated the Act, the Board, in exercising its discretion, would note as well the provocation by the applicant. I would refuse consent to prosecute.

12802-66-U: No-SAG Spring Company Limited (Applicant) v. UNITED STEELWORKERS OF AMERICA (Respondent).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: NORMAN L. MATHEWS, Q.C., DONALD A. LONG AND R. A. DENLEY FOR THE APPLICANT, L. A. MACLEAN, PATRICK DALEY AND BURRIS ORMSBY FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 2, 1967.

1. THE APPLICANT HAS APPLIED TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT AND HAS ALLEGED THAT THE RESPONDENT HAS REFUSED TO MEET WITH THE APPLICANT AND BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT AS REQUIRED BY SECTION 12 OF THE LABOUR RELATIONS ACT.
2. THE FACTS OF THIS CASE, FOR THE PURPOSE OF THIS DECISION, MAY BE SUMMARIZED AS FOLLOWS. THE RESPONDENT UNION WAS CERTIFIED ON DECEMBER 12TH, 1966 AS BARGAINING AGENT FOR ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE APPLICANT AT LONDON WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE BARGAINING COMMITTEES OF THE PARTIES MET AND BARGAINED ON JANUARY 20TH, 1967 FOLLOWING NOTICE TO BARGAIN. THE BARGAINING COMMITTEE OF THE RESPONDENT WAS COMPRISED OF CERTAIN OFFICERS AND OFFICIALS OF THE RESPONDENT AND WILLIAM PORTEOUS WHO WAS EMPLOYED BY THE APPLICANT IN ITS PRODUCTION DEPARTMENT. MR. PORTEOUS WAS A MEMBER OF THE PRODUCTION BARGAINING UNIT AND WAS PRESIDENT OF THE LOCAL OF THE RESPONDENT WHICH ADMINISTERED THE COLLECTIVE AGREEMENT COVERING THE PRODUCTION EMPLOYEES. MR. PORTEOUS HAD BEEN ON THE BARGAINING COMMITTEE WHICH NEGOTIATED THE COLLECTIVE AGREEMENT FOR THE PLANT BARGAINING UNIT. AT THE MEETING ON JANUARY 20TH, 1967, THE APPLICANT COMPLAINED ABOUT THE PRESENCE OF MR. PORTEOUS ON THE BARGAINING COMMITTEE WHICH WAS BARGAINING FOR THE OFFICE EMPLOYEES BUT NO ACTION WAS TAKEN.
3. ON FEBRUARY 22ND, 1967, WHEN THE PARTIES MET BY PRE-ARRANGEMENT TO CONTINUE THEIR NEGOTIATIONS WITH RESPECT TO THE OFFICE EMPLOYEES, MR. PORTEOUS AGAIN ATTENDED AS A MEMBER OF THE RESPONDENT'S BARGAINING COMMITTEE. ON THIS OCCASION THE APPLICANT OBJECTED TO MR. PORTEOUS' PRESENCE ON THE BARGAINING COMMITTEE AND REFUSED TO BARGAIN SO LONG AS MR. PORTEOUS REMAINED ON THE RESPONDENT'S BARGAINING COMMITTEE. THE BASIS OF THE APPLICANT'S OBJECTION TO MR. PORTEOUS WAS THAT MR. PORTEOUS WAS NOT A MEMBER OF THE OFFICE BARGAINING UNIT WITH RESPECT TO WHICH THE PARTIES WERE BARGAINING. THE APPLICANT

ARGUED THAT JUST AS THE BOARD SEPARATES OFFICE AND PLANT BARGAINING UNITS, SO ALSO SHOULD IT SEPARATE OFFICE AND PLANT BARGAINING COMMITTEES WHERE OBJECTION IS TAKEN BY AN EMPLOYER. THE RESPONDENT REFUSED TO BARGAIN WITH THE APPLICANT WITHOUT THE ASSISTANCE OF MR. PORTEOUS ON ITS BARGAINING COMMITTEE.

4. FOLLOWING AN APPLICATION FOR CONSENT TO PROSECUTE FOR FAILURE TO BARGAIN IN GOOD FAITH BY THE RESPONDENT UNION, THE APPLICANT LAUNCHED THE INSTANT APPLICATION.

5. THERE IS NO RESTRICTION UNDER THE LABOUR RELATIONS ACT WITH RESPECT TO THE COMPOSITION OF EITHER A TRADE UNION'S BARGAINING COMMITTEE OR THE BARGAINING COMMITTEE REPRESENTING MANAGEMENT. WHILE THERE MAY WELL BE CIRCUMSTANCES WHICH WOULD PRECLUDE A PARTICULAR INDIVIDUAL FROM REPRESENTING A TRADE UNION ON A BARGAINING COMMITTEE, THERE IS NOTHING BEFORE THE BOARD IN THE INSTANT CASE WHICH WOULD DISQUALIFY MR. PORTEOUS FROM ACTING AS A MEMBER OF THE UNION'S NEGOTIATING COMMITTEE AND ATTENDING THE NEGOTIATIONS BETWEEN THE PARTIES. IF THERE IS ANY MERIT TO THE APPLICANT'S OBJECTION TO THE PRESENCE OF A PLANT EMPLOYEE ON AN OFFICE BARGAINING COMMITTEE, THE GROUNDS FOR SUCH OBJECTION WOULD EXTEND TO AND PRECLUDE THE SAME TRADE UNION FROM REPRESENTING BOTH PLANT AND OFFICE BARGAINING UNITS. WHILE EMPLOYERS HAVE ARGUED THIS POSITION IN THE PAST, THE BOARD FOR MANY YEARS HAS CONSISTENTLY REFUSED TO FIND THAT A TRADE UNION WHICH REPRESENTS PLANT EMPLOYEES IS THEREBY PRECLUDED FROM REPRESENTING OFFICE EMPLOYEES. WHERE THE SAME TRADE UNION REPRESENTS A UNIT OF OFFICE EMPLOYEES AS WELL AS A UNIT OF PLANT EMPLOYEES IT IS NOT UNUSUAL TO HAVE THE BARGAINING COMMITTEES FOR EACH BARGAINING UNIT COMPRISED OF THE SAME INDIVIDUALS. IN THE INSTANT CASE, THE RESPONDENT'S UNION OFFICIALS WERE ON BOTH BARGAINING COMMITTEES. HOWEVER, NO OBJECTION WAS TAKEN WITH RESPECT TO THE RESPONDENT'S OFFICIALS. WE ARE UNABLE TO DISTINGUISH BETWEEN THE PRESENCE OF THE RESPONDENT'S OFFICIALS ON BOTH BARGAINING COMMITTEES AND THE PRESENCE OF A PLANT EMPLOYEE ON BOTH BARGAINING COMMITTEES. IT WOULD APPEAR THAT IT IS THE RESPONDENT'S INTENTION THAT ITS LOCAL WHICH ADMINISTERS THE COLLECTIVE AGREEMENT COVERING THE PLANT BARGAINING UNIT WILL ALSO ADMINISTER ANY COLLECTIVE AGREEMENT ENTERED INTO WITH RESPECT TO THE OFFICE BARGAINING UNIT. MR. PORTEOUS IS PRESIDENT OF THAT LOCAL. THE MERE OBJECTION BY THE APPLICANT TO THE PRESENCE OF MR. PORTEOUS DOES NOT OF ITSELF DISQUALIFY MR. PORTEOUS NOR DOES MR. PORTEOUS' PRESENCE CREATE ANY UNFAIR ADVANTAGE FOR THE RESPONDENT UNION.

6. THE BOARD IS OF OPINION THAT THERE IS NO REAL DISTINCTION BETWEEN THE FACTS IN THE INSTANT CASE AND THE FACTS IN THE HOUSE OF BRAEMORE UPHOLSTERED FURNITURE CASE, BOARD FILE #12431-66-U, JANUARY 5TH, 1967, IN WHICH THE BOARD UPHELD THE TRADE UNION'S RIGHT TO DESIGNATE ITS OWN BARGAINING COMMITTEE. HAVING REGARD, THEREFORE, TO THE DECISION OF THE BOARD IN THE HOUSE OF BRAEMORE UPHOLSTERED FURNITURE CASE AND ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES IN THE INSTANT CASE, THE BOARD DENIES THE APPLICANT'S REQUEST FOR CONSENT TO PROSECUTE AND THIS APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

12645-66-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT) V.  
THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
D. W. FORGIE AND F. W. MURRAY.

APPEARANCES AT HEARING: A. S. MAGERMAN AND J. KITTS FOR THE COMPLAINANT,  
D. R. BYERS AND D. MORLEY FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN FOR THE MAJORITY AND  
DISSENTING DECISIONS OF BOARD MEMBERS D. W. FORGIE AND F. W. MURRAY:

MARCH 1, 1967.

1. THIS IS A COMPLAINT FOR RELIEF MADE PURSUANT TO SECTION 65 OF  
THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT COMPLAINS THAT ON OR ABOUT JANUARY 3RD, 1967 THE  
AGGRIEVED PERSONS, AILEEN SCOTT, ELAINE WILLERTON (NEE SCANLON) AND CAROL  
ROHRER, AND ON OR ABOUT JANUARY 16TH, 1967, PATRICIA LEE, WERE DISCHARGED  
BY DONALD MORLEY, THE PLANT MANAGER OF THE RESPONDENT, IN CONTRAVENTION OF  
SECTION 50(A) AND 59(A)(1) OF THE LABOUR RELATIONS ACT.

3. WE WILL DEAL FIRST WITH THE AGGRIEVED PERSONS AILEEN SCOTT, ELAINE  
WILLERTON AND CAROL ROHRER. ALL THREE WERE EMPLOYED IN DIFFERENT JOBS IN  
THE FOUNDATION DEPARTMENT OF THE RESPONDENT'S PLANT AT PORT PERRY, AND ALL  
WERE LAID OFF ON DECEMBER 22ND, 1966. THE REASON GIVEN FOR THEIR LAYOFF  
AT THE TIME WAS A LACK OF WORK. ON JANUARY 3RD, 1967, ALL WERE TELEPHONED  
BY MORLEY AND INFORMED BY HIM THAT NO WORK WOULD BE AVAILABLE IN THE FORE-  
SEEABLE FUTURE. ACCORDINGLY, HE ASKED THEM TO PICK UP THEIR UNEMPLOYMENT  
INSURANCE BOOKS. MORLEY TESTIFIED THAT HE TOLD THEM THAT THEY WERE ELIGIBLE  
FOR RECALL WHEN WORK WAS AVAILABLE; HOWEVER, NONE OF THE THREE COULD RECALL  
MORLEY MAKING THIS STATEMENT. THE THREE AGGRIEVED PERSONS DID APPEAR AT A  
HEARING OF THE BOARD ON THE COMPLAINANT'S CERTIFICATION APPLICATION ON  
DECEMBER 19TH, AT THE BEHEST OF THE COMPLAINANT, BUT NONE OF THEM WERE  
CALLED UPON TO TESTIFY. MORLEY WAS ALSO IN ATTENDANCE AT THAT HEARING.

4. MORLEY GAVE THE FOLLOWING EVIDENCE RELATING TO THE RESPONDENT'S  
OPERATORS AT ITS PORT PERRY PLANT IN THE MONTHS OF DECEMBER 1966 AND  
JANUARY 1967. THE RESPONDENT IS ENGAGED IN THE MANUFACTURE OF LINGERIE AND  
FOUNDATION GARMENTS. IN MID-DECEMBER THE RESPONDENT EMPLOYED 38 WOMEN, 15  
IN THE FOUNDATION DEPARTMENT AND 23 IN THE LINGERIE DEPARTMENT. AS A  
RESULT OF A CUT-BACK IN PRODUCTION REQUIREMENTS IN THE FOUNDATION DEPARTMENT,  
IT WAS NECESSARY TO LAY OFF EMPLOYEES. ACCORDINGLY, ON DECEMBER 22ND, 1966,  
HE INSTRUCTED THE FORELADY IN CHARGE TO LAY OFF SEVEN EMPLOYEES IN THE  
FOUNDATION DEPARTMENT, THE THREE AGGRIEVED PERSONS BEING INCLUDED AMONG THE  
SEVEN. THE SEVEN EMPLOYEES WHO WERE LAID OFF HAD THE LEAST SENIORITY AMONG  
THE EMPLOYEES IN THE FOUNDATION DEPARTMENT. OF THE EIGHT IN THE FOUNDATION  
DEPARTMENT WHO WERE NOT LAID OFF ON DECEMBER 22ND, THREE ARE STILL EMPLOYED  
IN THE FOUNDATION DEPARTMENT, THREE HAVE BEEN TRANSFERRED TO THE LINGERIE



DEPARTMENT, AND TWO HAVE VOLUNTARILY TERMINATED THEIR EMPLOYMENT. IN EARLY JANUARY, FOUR OF THE EMPLOYEES LAID OFF ON DECEMBER 22ND WERE RECALLED. THREE WERE EMPLOYED FOR SEVEN DAYS AND ONE FOR FOURTEEN DAYS. ALL FOUR WERE THEREUPON INDEFINITELY LAID OFF. WITH ONE EXCEPTION, THE EMPLOYEES WHO WERE RECALLED FOR A TEMPORARY PERIOD IN JANUARY HAD MORE SENIORITY THAN THE THREE AGGRIEVED PERSONS. MORLEY'S EXPLANATION FOR RECALLING THE EMPLOYEE WITH LESS SENIORITY WAS THAT SHE WAS MORE CAPABLE THAN THE AGGRIEVED PERSONS.

5. WE ACCEPT THE EVIDENCE OF MORLEY THAT THERE WAS A CUT-BACK IN PRODUCTION AND THAT A LAYOFF OF EMPLOYEES WAS NECESSARY FOR THAT REASON. ALTHOUGH THE EVIDENCE RELATING TO MORLEY'S ADDRESS TO THE EMPLOYEES ON DECEMBER 10TH INDICATES THAT HE WAS VERY MUCH OPPOSED TO THE COMPLAINANT UNION COMING INTO THE PLANT, AND WHILE ON THE EVIDENCE HE HAD GOOD REASON TO ASSUME THE THREE AGGRIEVED PERSONS WERE SUPPORTERS OF THE UNION, THE COMPLAINANT HAS FAILED TO SATISFY US THAT ELAINE WILLERTON AND CAROLE ROHRER WERE INDEFINITELY LAID OFF ON JANUARY 3RD, 1967 BECAUSE OF THEIR SUPPORT OF THE COMPLAINANT UNION.

6. DIFFERENT CONSIDERATIONS, HOWEVER, APPLY WITH RESPECT TO AILEEN SCOTT. HER TESTIMONY IS THAT ON JANUARY 4TH, HER FORELADY, JEAN RIBA INFORMED HER THAT MORLEY HAD TOLD HER (RIBA) THAT SCOTT WAS BEING LAID OFF BECAUSE OF THE UNION. DOREEN BARKER, AN EMPLOYEE OF THE RESPONDENT, ALSO TESTIFIED THAT RIBA HAD TOLD HER (BARKER) THAT AILEEN SCOTT WAS LAID OFF BECAUSE SHE HAD TOO MUCH TO DO WITH THE UNION. MARJORIE TRIPP, ANOTHER EMPLOYEE, TESTIFIED THAT MORLEY CAME TO HER ON TWO OCCASIONS AND ASKED HER ABOUT THE SCOTT WOMAN. TRIPP INTERPRETED HIS QUESTION AS MEANING MRS. SCOTT'S RELATIONS WITH THE UNION, AND BY HER (TRIPP'S) REPLY INDICATED TO MORLEY THAT MRS. SCOTT WAS A UNION SUPPORTER. THE RESPONDENT CALLED NO EVIDENCE TO DISPUTE ANY OF THE ABOVE TESTIMONY.

WHILE IT MAY WELL BE THAT MRS. SCOTT, IN ANY EVENT, WOULD HAVE BEEN LAID OFF BECAUSE OF THE CUT-BACK IN PRODUCTION, HAVING REGARD TO THE ABOVE EVIDENCE, WE FIND THAT MORLEY WAS PRIMARILY MOTIVATED TO LAY HER OFF INDEFINITELY ON JANUARY 3RD, 1967 BECAUSE OF HIS BELIEF, REAL OR MISTAKEN, THAT SHE WAS AN ACTIVE SUPPORTER OF THE UNION. WE WOULD ADD, HOWEVER, THAT, HAVING REGARD TO ALL THE EVIDENCE, WE ARE NOT PREPARED TO DRAW THE INFERENCE FROM THE PARTICULAR EVIDENCE RELATING TO MRS. SCOTT THAT THE SAME MOTIVATION OF THE RESPONDENT APPLIES TO ELAINE WILLERTON AND CAROLE ROHRER.

8. THE CIRCUMSTANCES SURROUNDING THE DISCHARGE OF PATRICIA LEE ARE QUITE DIFFERENT. WE FIND ON THE EVIDENCE THAT SHE HAD AN UNSATISFACTORY WORK RECORD, PARTICULARLY AS IT RELATES TO HER ABSENTEEISM, DURING HER EMPLOYMENT WITH THE RESPONDENT. THE EVIDENCE IS THAT SHE WAS ABSENT TWO DAYS IN THE WEEK PRIOR TO HER DISCHARGE AND FOR THE ENTIRE PREVIOUS WEEK. WE FIND ON ALL THE EVIDENCE THAT SHE WAS DISCHARGED FOR CAUSE ON JANUARY 16TH, AND NOT BECAUSE OF ANY UNION ACTIVITIES ON HER PART.

9. THE COMPLAINT AS IT RELATES TO ELAINE WILLERTON, CAROLE ROHRER AND PATRICIA LEE ACCORDINGLY IS DISMISSED.

10. THE BOARD FINDS, HOWEVER, THAT AILEEN SCOTT WAS DISCHARGED BY THE RESPONDENT ON JANUARY 3RD, 1967 IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

11. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY AILEEN SCOTT TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS SHE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HER DISCHARGE ON JANUARY 3RD, 1967.
- (2) AS COMPENSATION FOR HER LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM JANUARY 3RD, 1967 TO AND INCLUDING FEBRUARY 20TH, 1967, THE RESPONDENT SHALL FORTHWITH PAY AILEEN SCOTT \$280.00.
- (3) THE RESPONDENT AND COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY AILEEN SCOTT BETWEEN THE DATE OF THE HEARING ON FEBRUARY 20TH, 1967, AND THE DATE OF HER ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER F. W. MURRAY:

MARCH 1, 1967.

WHILE I CONCUR IN THE MAJORITY DECISION DISMISSING THE COMPLAINT WITH RESPECT TO ELAINE WILLERTON, CAROLE ROHRER AND PATRICIA LEE, I DISSENT FROM THE MAJORITY DECISION RELATING TO AILEEN SCOTT.

THE EVIDENCE IS THAT MRS. SCOTT HAD THE LEAST SENIORITY AND EXPERIENCE ON THE MACHINERY INVOLVED OF ALL SEVEN EMPLOYEES WHO WERE LAID OFF ON DECEMBER 22ND, 1966. WHILE IT MAY WELL BE THAT MORLEY WAS RELIEVED TO HAVE HER EMPLOYMENT WITH THE RESPONDENT TERMINATED, I AM SATISFIED ON THE EVIDENCE THAT MRS. SCOTT'S INDEFINITE LAYOFF ON JANUARY 3RD, 1967 CAME ABOUT AS A RESULT OF A CUT-BACK IN PRODUCTION IN THE FOUNDATION DEPARTMENT AND NOT BECAUSE OF ANY VIEWS MORLEY MAY HAVE HELD CONCERNING HER UNION ACTIVITIES.

ACCORDINGLY, I WOULD HAVE DISMISSED THE COMPLAINT WITH REGARD TO AILEEN SCOTT.

DECISION OF BOARD MEMBER D. W. FORGIE:

MARCH 1, 1967.

I DISSENT.

I CONCUR IN THE DETERMINATION TO REINSTATE AND EMPLOY AELEEN SCOTT, WITH COMPENSATION. HOWEVER, I FIND IT IMPOSSIBLE TO SEPARATE THE BACKGROUND AND CIRCUMSTANCES GIVING RISE TO HER DISCHARGE FROM THAT OF ELAINE WILLERTON (NEE SCANLON), CAROLE ROHRER, AND PATRICIA LEE. THE EVIDENCE RELATING TO MORLEY'S ADDRESS TO THE EMPLOYEES ON DECEMBER 10, 1966 INDICATES THAT HE WAS VERY MUCH OPPOSED TO THE COMPLAINANT UNION COMING INTO THE PLANT, AND, ON THE EVIDENCE, HE HAD GOOD REASON TO ASSUME THE AGGRIEVED PERSONS WERE SUPPORTERS OF THE UNION. ADDITIONALLY, MORLEY'S "CONVENIENT LOSS OF MEMORY" PARTICULARLY IN RELATION TO WHY HE CALLED THE DECEMBER 10, 1966 MEETING, CASTS DOUBT ON THE ACCURACY OF HIS STATEMENTS, THE MOTIVATION GIVING RISE TO HIS DECISIONS, AND, IN GENERAL, HIS VERACITY AS A WITNESS.

ACCORDINGLY, I WOULD NOT HAVE GIVEN WEIGHT TO HIS EVIDENCE; FIND THAT THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT; REINSTATE AND EMPLOY BOTH AILEEN SCOTT AND PATRICIA LEE WITH APPROPRIATE COMPENSATION; COMPENSATE CAROLE ROHRER AND ELAINE WILLERTON (NEE SCANLON) FOR THEIR LOSS OF EARNINGS.

12698-66-U:	12749-66-U:
12699-66-U:	12758-66-U:
12700-66-U:	12759-66-U:
12701-66-U:	12760-66-U:
12702-66-U:	12761-66-U:
12703-66-U:	12764-66-U:
12743-66-U:	12767-66-U:
12744-66-U:	12783-66-U:
12745-66-U:	12784-66-U: ANDREJ OCEPEK, ANDREJ VESELY, EARL M. GORDON, BOLESLAW ZINA, STEFAN COSEC, LORNE R. MORRISON, ALBERT MURDOCK, LYLE LEACH, ARTHUR STAINES, ANTHONY MASTRIA, LES STOKER, MILOS DUBOVEC, FRANK ZENG, BILL TOOKE, RAYMOND TISDELL, RICCARDO BARELLI, HARLEY CULP, AND WILLIAM JENTER (COMPLAINANTS) V. <u>INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031 AND PROVINCIAL ENGINEERING LTD., NIAGARA FALLS ONTARIO</u> (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: ANDREJ OCEPEK, ANDREJ VESELY, EARL M. GORDON, BOLESLAW ZIMA, STEFAN COSEC, LORNE R. MORRISON, ALBERT BRUCE MURDOCK, LYLE LEACH, ARTHUR EDWARD STAINES, ANTHONY MASTRIA, LESLIE STOKER, MILOS DUBOVEC, FRANK ZENG, WILLIAM TOOKE, RAYMOND S. TISDELL, RICCARDO BARELLI AND WILLIAM JENTER FOR THE COMPLAINANTS, ALEX WALKER AND J. V. GOODISON FOR INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031, AND R. FAIRTHORNE FOR PROVINCIAL ENGINEERING LTD.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE:

MARCH 23, 1967.

1. THE COMPLAINANTS HEREIN FILED INDIVIDUAL COMPLAINTS WITH THE BOARD IN TERMS COMMON TO ALL. BY ITS DECISION OF FEBRUARY 8TH, 1967, THE BOARD DIRECTED THE CONSOLIDATION OF THE COMPLAINTS. IN THE SAME DECISION THE BOARD DIRECTED THE REGISTRAR TO LIST THE MATTER FOR HEARING FOR THE PURPOSE OF ENABLING THE COMPLAINANTS TO SHOW CAUSE WHY THE MATTERS CONSOLIDATED SHOULD BE PROCESSED FURTHER, HAVING REGARD, INTER ALIA, TO:

- 1) THE LENGTH OF TIME WHICH HAS ELAPSED SINCE THE ACT OR OMISSIONS COMPLAINED OF TOOK PLACE;
- 2) THE FACT THAT SECTION 65 OF THE ACT IS A PROCEDURAL AND REMEDIAL SECTION WHICH DOES NOT ESTABLISH A SUBSTANTIVE RIGHT AND THE COMPLAINT CONTAINS NO ALLEGATION OF A BREACH OF ANY SUBSTANTIVE PROVISION OF THE ACT.

2. THE UNDERLYING CAUSE OF THE COMPLAINTS IS THE BELIEF, ON THE PART OF THE COMPLAINANTS, THAT THEY HAVE LOST SENIORITY STATUS TO WHICH THEY FEEL ENTITLED.

3. THE COMPLAINANTS WERE ALL AT ONE TIME EMPLOYEES OF THE HERBERT MORRIS CRANE AND HOIST COMPANY LIMITED, HEREINAFTER CALLED THE MORRIS COMPANY. IN JUNE 1964, PROVINCIAL ENGINEERING LTD., ONE OF THE RESPONDENTS HEREIN, ACQUIRED THE MORRIS COMPANY AND OPERATED IT UNDER THAT NAME FOR SOME TIME. AT THE TIME OF THE ACQUISITION, EMPLOYEES OF THE MORRIS COMPANY WERE REPRESENTED BY INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 175C. AT THE SAME TIME THE EMPLOYEES OF PROVINCIAL ENGINEERING LTD. WERE REPRESENTED BY INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE NO. 1031, HEREINAFTER CALLED THE MACHINISTS.

4. THE MACHINISTS, IN SEPTEMBER OF 1964, WERE CERTIFIED AS BARGAINING AGENT FOR EMPLOYEES OF THE MORRIS COMPANY, IN THE BARGAINING UNIT FORMERLY REPRESENTED BY THE INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 175C. THE COMPLAINANTS WERE ALL INCLUDED IN THAT BARGAINING UNIT, AND SINCE THAT DATE HAVE BEEN REPRESENTED BY LOCAL 1031 OF THE MACHINISTS.

5. THE EVIDENCE IS THAT WHEN THE QUESTION OF CHANGING THE BARGAINING AGENTS WAS BEING DEBATED, THE REPRESENTATIVE OF THE MACHINISTS, MR. BOLTON, ASSURED THE COMPLAINANTS THAT THEIR SENIORITY IN THE MORRIS COMPANY WOULD BE MAINTAINED, UNAFFECTED BY THE CHANGE IN BARGAINING AGENTS. INsofar AS THE EVIDENCE GIVEN BEFORE THE BOARD IS CONCERNED, THE UNION HONOURED THAT PRECISE COMMITMENT AND THE COMPLAINANTS SENIORITY, SO LONG AS THEY REMAINED EMPLOYEES OF THE MORRIS COMPANY, REMAINED THE SAME AS IT HAD PREVIOUSLY BEEN WITH THAT COMPANY UNDER THE AGREEMENT BETWEEN IT AND THE INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 175C.

6. IN OR ABOUT THE 31ST OF DECEMBER, 1965, PROVINCIAL ENGINEERING LTD. TOOK OVER ALL ASSETS OF THE MORRIS COMPANY AND THE OPERATIONS OF THE TWO COMPANIES WERE INTEGRATED WITH THE EMPLOYEES OF THE MORRIS COMPANY BECOMING EMPLOYEES OF PROVINCIAL ENGINEERING LTD.



7. IN ANTICIPATION OF THE INTEGRATION OF THE TWO COMPANIES, A MEETING WAS HELD BETWEEN PROVINCIAL ENGINEERING LTD. AND LOCAL 1031 OF THE MACHINISTS FOR THE EXPLICIT PURPOSE OF DISCUSSING SENIORITY AND ITS EFFECT WHEN INTEGRATION TOOK PLACE. THE RESULT OF THIS MEETING WAS THAT THE UNION COMMITTEE BROUGHT A PROPOSAL FOR FULL INTEGRATION OF SENIORITY BEFORE THEIR MEMBERSHIP. THE MAJORITY OF THE MEMBERSHIP VOTED DOWN THE PROPOSAL. THE RESULT OF THE VOTE WAS APPROXIMATELY 180 AGAINST FULL INTEGRATION AND 18 FOR IT. IN OTHER WORDS, THE PROPOSAL FOR FULL INTEGRATION PUT FORWARD BY THE UNION COMMITTEE AND ACCEPTED BY THE COMPANY WAS REJECTED BY THE MEMBERSHIP OF THE LOCAL IN ABOUT THE PROPORTION OF REGULAR PROVINCIAL ENGINEERING LTD. EMPLOYEES TO FORMER MORRIS COMPANY EMPLOYEES IN THE EXPANDED BARGAINING UNIT. IT IS THEREFORE WITH THE MAJORITY OF THEIR FELLOW EMPLOYEES IN THE BARGAINING UNIT AND NOT WITH THE UNION EXECUTIVE OR THE COMPANY THAT THE COMPLAINANTS HAVE TO CONTEND. THE LATTER TWO BODIES HAVE DONE NOTHING IN ANY WAY ADVERSE TO THE COMPLAINANTS INTEREST WITH RESPECT TO SENIORITY, QUITE THE CONTRARY, IN FACT, IS THE CASE.

8. HAVING HEARD THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD, WHILE IT SYMPATHIZES WITH THE COMPLAINANTS IN THE LOSS OF THEIR SENIORITY, IS COMPELLED TO FIND THAT THE COMPLAINANTS HAVE FAILED TO SHOW CAUSE WHY THIS MATTER SHOULD BE PROCESSED FURTHER AND THE COMPLAINTS ARE ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN:

MARCH 23, 1967.

THERE IS NO EVIDENCE OF VIOLATION OF ANY PROVISION OF THE COLLECTIVE AGREEMENT PRESENTLY IN EFFECT BETWEEN THE RESPONDENT COMPANY AND INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 1031, OR OF ANY SUBSTANTIVE PROVISION OF THE LABOUR RELATIONS ACT. CONSEQUENTLY, THE BOARD HAS NO JURISDICTION TO GIVE ANY RELIEF TO THE EMPLOYEES (COMPLAINANTS) IN RESPECT OF THE COMPUTATION OF THEIR SENIORITY CREDITS AS APPLIED TO LAY-OFFS AND RECALL. IT IS STRICTLY A MATTER FOR NEGOTIATION BETWEEN THE COMPANY AND LOCAL 1031, WHICH IS THE CERTIFIED BARGAINING AGENT FOR THE EMPLOYEES CONCERNED. CONSEQUENTLY, I AM OBLIGED TO CONCUR IN THE DECISION OF THE BOARD THAT THE COMPLAINTS MUST BE DISMISSED.

THE PLIGHT OF THE COMPLAINANTS DISTURBS ME GREATLY. I FULLY APPRECIATE THE SITUATION IN WHICH THEY FIND THEMSELVES CONCERNING THEIR SENIORITY CREDITS AS APPLIED TO LAY-OFFS AND RECALL. I SINCERELY HOPE THAT AN EQUITABLE AND SATISFACTORY SOLUTION WILL BE NEGOTIATED BETWEEN THE PARTIES WHO ARE NOW BARGAINING FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT. IF THE HERBERT MORRIS CRANE AND HOIST COMPANY LIMITED HAD TAKEN OVER PROVINCIAL ENGINEERING LTD., INSTEAD OF VICE VERSA, I AM SURE THAT THE EMPLOYEES OF THE LATTER COMPANY WOULD WANT THE FULL TERM OF YEARS THEY WORKED FOR PROVINCIAL ENGINEERING LTD. TO APPLY ON THEIR SENIORITY FOR THE PURPOSES OF LAY-OFFS AND RECALL WITH THE HERBERT MORRIS CRANE AND HOIST COMPANY LIMITED.

INDEXED ENDORSEMENTS - SECTION 33(2)

12796-66-M: THE SUDBURY BUILDERS' EXCHANGE (GENERAL CONTRACTORS SECTION)  
(APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS - LOCAL 2486  
LOCAL UNION NO. 2486 (RESPONDENT).

BEFORE: G. W. REED, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 10, 1967.

1. THIS IS AN APPLICATION UNDER SECTION 33(2) OF THE LABOUR RELATIONS ACT TO HAVE A "NO STRIKE" CLAUSE ADDED TO THE COLLECTIVE AGREEMENT PRESENTLY IN OPERATION BETWEEN THE PARTIES. THE AGREEMENT IN QUESTION BECAME EFFECTIVE ON MAY 25, 1966 AND REMAINS IN EFFECT UNTIL APRIL 30, 1969.

2. SECTION 33 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

33.-(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THERE WILL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE.

(2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1, IT MAY BE ADDED TO THE AGREEMENT AT ANY TIME BY THE BOARD UPON THE APPLICATION OF EITHER PARTY.

3. IT IS CLEAR THAT THE AGREEMENT BETWEEN THE PARTIES, A COPY OF WHICH WAS FILED WITH THE APPLICATION, DOES NOT CONTAIN THE CLAUSE ENVISAGED BY SUBSECTION 1 OF SECTION 33. ALTHOUGH THE RESPONDENT TRADE UNION WAS SERVED WITH NOTICE OF THE APPLICATION AND INVITED TO MAKE COMMENTS WITH RESPECT THERETO, IT HAS FAILED TO FILE WITH THE BOARD ANY WRITTEN REPRESENTATIONS.

4. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE PROVISIONS OF SUBSECTION 2 OF SECTION 33, IT SEEMS CLEAR THAT THE APPLICANT IS ENTITLED TO THE RELIEF SOUGHT, THE ONLY REMAINING QUESTION BEING THE WORDING OF THE PROPOSED CLAUSE. IT SEEMS TO THE BOARD THAT WHATEVER WORDING IS USED IT SHOULD CONFORM AS CLOSELY AS POSSIBLE TO THAT OF SUBSECTION 1 OF SECTION 33.

5. THE PARTIES TO THE AGREEMENT ARE LOCATED IN SUDBURY AND IT WOULD SERVE NO USEFUL PURPOSE TO PUT THE MATTER ON FOR HEARING, THUS REQUIRING THE PARTIES TO COME TO TORONTO, FOR THE SOLE PURPOSE OF HEARING REPRESENTATIONS ON THE WORDING OF THE PROPOSED CLAUSE WHICH IN OUR VIEW, SHOULD PROHIBIT NOT ONLY STRIKES BUT LOCK-OUTS AS WELL. IF THE PARTIES HAVE ANY FURTHER REPRESENTATIONS TO MAKE WITH RESPECT TO THE WORDING OF THE CLAUSE WHICH THE BOARD HAS BEEN ASKED TO ADD TO THE COLLECTIVE AGREEMENT, THESE REPRESENTATIONS SHOULD BE FILED WITH THE BOARD ON OR BEFORE THURSDAY, MARCH 16, 1967.

12796-66-M: THE SUDBURY BUILDERS' EXCHANGE (GENERAL CONTRACTORS SECTION)  
7 APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,  
LOCAL UNION NO. 2486 (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS  
R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: MARCH 22, 1967.

FURTHER TO THE BOARD'S DECISION DATED MARCH 10, 1967, NO REPRESENTATIONS WERE RECEIVED FROM THE PARTIES WITHIN THE TIME FIXED THEREIN.

IN THAT DECISION THE BOARD FOUND THAT THE COLLECTIVE AGREEMENT DATED MAY 25, 1966, BETWEEN THE PARTIES HERETO DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1 OF SECTION 33 OF THE LABOUR RELATIONS ACT.

THE FOLLOWING PROVISION IS ADDED TO THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES: "THERE SHALL BE NO STRIKES OR LOCKOUTS SO LONG AS THIS AGREEMENT CONTINUES TO OPERATE."

INDEXED ENDORSEMENT - SECTION 47A

12769-66-M: ETOBICOKE TOWNSHIP CIVIC EMPLOYEES' LOCAL UNION NO. 185 C.U.P.E. - C.L.C. (APPLICANT) v. BOROUGH OF ETOBICOKE; ETOBICOKE TOWNSHIP CIVIC EMPLOYEES, LOCAL UNION # 185 CUPE-CLC; CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 36; THE EMPLOYEES OF NEW TORONTO, LOCAL 230 CUPE; LONG BRANCH CIVIC EMPLOYEES LOCAL UNION 266, CANADIAN UNION OF PUBLIC EMPLOYEES; LOCAL UNION 636 OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: M. HIKL, R. J. ANDERSON AND S. THOMPSON FOR THE APPLICANT AND FOR CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL UNIONS #36, #230 AND #266; J. MCKINNON AND F. O. BARNETT FOR THE RESPONDENT, BOROUGH OF ETOBICOKE; AND J. A. SHIRKIE AND A. D. DOLLACK FOR THE RESPONDENT, LOCAL UNION 636 OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS.

DECISION OF THE BOARD: MARCH 30, 1967.

. . .

2. THIS IS AN APPLICATION UNDER SECTION 47A OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT IS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE BOROUGH OF ETOBICOKE.

3. PRIOR TO JANUARY 1, 1967 THE APPLICANT, HEREINAFTER REFERRED TO AS LOCAL UNION #185, WAS THE BARGAINING AGENT FOR CERTAIN HOURLY RATED EMPLOYEES OF THE FORMER TOWNSHIP OF ETOBICOKE AND CERTAIN EMPLOYEES OF THE SURVEY SECTION OF THE ENGINEERING DEPARTMENT OF THE SAID TOWNSHIP. THE EMPLOYEES IN QUESTION WERE COVERED BY TWO SEPARATE COLLECTIVE AGREEMENTS BETWEEN LOCAL UNION #185 AND THE FORMER TOWNSHIP OF ETOBICOKE.

4. PRIOR TO JANUARY 1, 1967 THE LONG BRANCH CIVIC EMPLOYEES, LOCAL UNION #266, CANADIAN UNION OF PUBLIC EMPLOYEES, HEREINAFTER REFERRED TO AS LOCAL UNION #266, WAS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE WORKS & SANITATION & PARKS DEPARTMENT OF THE FORMER VILLAGE OF LONG BRANCH AND THESE EMPLOYEES WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN LOCAL UNION #266 AND THE FORMER VILLAGE OF LONG BRANCH.
5. PRIOR TO JANUARY 1, 1967 THE EMPLOYEES OF NEW TORONTO LOCAL #230, CANADIAN UNION OF PUBLIC EMPLOYEES, HEREINAFTER REFERRED TO AS LOCAL UNION #230, WAS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE WORKS AND PARKS DEPARTMENTS OF THE TOWN OF NEW TORONTO AND THESE EMPLOYEES WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN LOCAL UNION #230 AND THE FORMER TOWN OF NEW TORONTO.
6. PRIOR TO JANUARY 1, 1967 THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL #36, HEREINAFTER REFERRED TO AS LOCAL UNION #36, WAS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE WORKS AND PARKS DEPARTMENT OF THE FORMER TOWN OF MIMICO AND THESE EMPLOYEES WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN LOCAL UNION #36 AND THE FORMER TOWN OF MIMICO.
7. PRIOR TO JANUARY 1, 1967 LOCAL UNION 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, HEREINAFTER REFERRED TO AS LOCAL UNION #636, I.B.E.W., WAS THE BARGAINING AGENT FOR ALL EMPLOYEES, WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL, OF THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF NEW TORONTO AND THESE EMPLOYEES WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN LOCAL UNION #636, I.B.E.W. AND THE SAID COMMISSION.
8. ON JANUARY 1, 1967 BY VIRTUE OF SECTION 13 OF THE MUNICIPALITY OF METROPOLITAN TORONTO AMENDMENT ACT, 1966, STATUTES OF ONARIO, 14-15 ELIZABETH II, CHAPTER 96, THE TOWNSHIP OF ETOBICOKE, THE VILLAGE OF LONG BRANCH, THE TOWN OF MIMICO AND THE TOWN OF NEW TORONTO WERE AMALGAMATED AS A TOWNSHIP MUNICIPALITY UNDER THE NAME OF THE BOROUGH OF ETOBICOKE. THE EMPLOYEES FORMERLY COVERED BY THE AGREEMENTS BETWEEN LOCAL UNION #185 AND THE TOWNSHIP OF ETOBICOKE, LOCAL UNION #230 AND THE TOWN OF NEW TORONTO, LOCAL UNION #266 AND THE VILLAGE OF LONG BRANCH, AND LOCAL UNION #36 AND THE TOWN OF MIMICO ARE NOW EMPLOYEES OF THE BOROUGH OF ETOBICOKE.
9. THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF NEW TORONTO ALSO CEASED TO EXIST ON JANUARY 1, 1967. SOME OF ITS EMPLOYEES ARE NOW EMPLOYED BY THE HYDRO ELECTRIC COMMISSION OF THE BOROUGH OF ETOBICOKE WHILE OTHERS, SOME SIX OR SEVEN, ARE PRESENTLY EMPLOYED IN THE UTILITIES DEPARTMENT OF THE BOROUGH OF ETOBICOKE. IN THIS APPLICATION WE ARE CONCERNED ONLY WITH THE SIX OR SEVEN EMPLOYEES IN THE UTILITIES DEPARTMENT.
10. SUBSECTION 10 OF SECTION 47A OF THE LABOUR RELATIONS ACT PROVIDES:

(10) WHERE ONE OR MORE MUNICIPALITIES AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT IS ERCTED INTO ANOTHER MUNICIPALITY, OR TWO OR MORE SUCH MUNICIPALITIES ARE AMALGAMATED, UNITED OR OTHERWISE JOINED TOGETHER, OR ALL OR PART OF ONE SUCH MUNICIPALITY IS ANNEXED, ATTACHED



OR ADDED TO ANOTHER SUCH MUNICIPALITY, THE EMPLOYEES OF THE MUNICIPALITIES CONCERNED ARE DEEMED TO HAVE BEEN INTERMINGLED, AND,

- (A) THE BOARD MAY EXERCISE THE LIKE POWERS AS IT MAY EXERCISE UNDER SUBSECTIONS 5 AND 7 WITH RESPECT TO THE SALE OF A BUSINESS UNDER THIS SECTION;
- (B) THE NEW OR ENLARGED MUNICIPALITY HAS THE LIKE RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A BUSINESS IS SOLD UNDER THIS SECTION AND WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES; AND
- (C) ANY TRADE UNION CONCERNED HAS THE LIKE RIGHTS AND OBLIGATIONS AS IT WOULD HAVE IN THE CASE OF THE INTERMINGLING OF EMPLOYEES IN TWO OR MORE BUSINESSES UNDER THIS SECTION.

THE BOARD'S POWERS REFERRED TO IN CLAUSE (A) OF SUBSECTION 10 ABOVE ARE AS FOLLOWS:

- (5) . . . THE BOARD MAY . . .
  - (A) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;
  - (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
  - (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT.
- (7) BEFORE DISPOSING OF ANY APPLICATION UNDER THIS SECTION, THE BOARD MAY MAKE SUCH INQUIRY, MAY REQUIRE THE PRODUCTION OF SUCH EVIDENCE AND THE DOING OF SUCH THINGS, OR MAY HOLD SUCH REPRESENTATION VOTES, AS IT DEEMS APPROPRIATE.

11. IT IS CLEAR THAT THERE HAS BEEN AN AMALGAMATION OF MUNICIPALITIES WITHIN THE MEANING OF SUBSECTION 10 OF SECTION 47A AND THAT THAT SUBSECTION IS THEREFORE APPLICABLE IN THE PRESENT CASE. ONE OF THE FIRST QUESTIONS TO BE DETERMINED, THEREFORE, IS THAT OF THE APPROPRIATE BARGAINING UNIT OR UNITS.

LOCAL UNION #185 AND THE BOROUGH OF ETOBICOKE ARE IN AGREEMENT AS TO THE DESCRIPTION OF AN APPROPRIATE BARGAINING UNIT. LOCAL UNION #636, I.B.E.W. SUBMITS THAT THERE SHOULD BE AT LEAST TWO BARGAINING UNITS, ONE OF WHICH WOULD CONSIST OF THE EMPLOYEES OF THE UTILITIES DEPARTMENT OF THE BOROUGH OF ETOBICOKE, THE DEPARTMENT IN WHICH THE SIX OR SEVEN PERSONS FORMERLY EMPLOYED BY THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF NEW TORONTO ARE NOW LOCATED. ACCORDING TO THE BOROUGH OF ETOBICOKE, THIS DEPARTMENT COM- PRISES APPROXIMATELY 60 EMPLOYEES. LOCAL UNION #636, I.B.E.W. ESTIMATES THAT THERE ARE APPROXIMATELY 43 EMPLOYEES IN THE DEPARTMENT. IT FURTHER SUBMITS THAT THERE SHOULD BE A REPRESENTATION VOTE DIRECTED AMONG THE EMPLOYEES OF THIS DEPARTMENT TO ASCERTAIN WHICH UNION SHOULD REPRESENT THE EMPLOYEES. EVEN IF LOCAL UNION #636, I.B.E.W. IS RIGHT IN ITS ESTIMATE, THE SIX OR SEVEN EMPLOYEES IT REPRESENTED MAKE UP ONLY ABOUT 14 PER CENT OF THE EMPLOYEES IN ITS PROPOSED BARGAINING UNIT. HAVING REGARD TO THE DECISIONS OF THIS BOARD IN THE ALLIANCE DAIRY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1966, P. 336, AND THE WESTEEL PRODUCTS CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1966, P. 718, IT IS CLEAR THAT THIS IS NOT A CASE IN WHICH THE BOARD WOULD DIRECT A REPRESENTATION VOTE BECAUSE LOCAL UNION #636, I.B.E.W. REPRESENTS SUCH A SMALL PERCENTAGE OF THE EMPLOYEES IN THE BARGAINING UNIT.

12. LOCAL UNION #636, I.B.E.W. ALSO CONTENDED THAT THE COLLECTIVE AGREE- MENT WHICH IT HAD WITH THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF NEW TORONTO CONTINUES IN EFFECT. IN SUPPORT THEREOF THE SAID LOCAL UNION RELIED ON A DECISION (UNREPORTED) OF MR. JUSTICE RICHARDSON IN THE SUPREME COURT OF ONTARIO, DATED JANUARY 25, 1963, INVOLVING THE STAMFORD PUBLIC UTILITIES COMMISSION OF THE TOWNSHIP OF STAMFORD. WE ARE UNABLE TO SEE HOW THIS DECISION ADVANCES THE ARGUMENT OF THE SAID LOCAL. IT WOULD APPEAR THAT THE DECISION DEALT ONLY WITH THE RIGHTS OF PARTIES AND EMPLOYEES UNDER A COLLECTIVE AGREE- MENT PRIOR TO THE EFFECTIVE DATE OF THE ORDER OF ANNEXATION OF STAMFORD TOWNSHIP TO NIAGARA FALLS. FURTHERMORE, SUBSECTION 10 OF SECTION 47A WAS NOT IN EFFECT AT THE TIME OF THE SAID ANNEXATION.

HOWEVER, EVEN IF LOCAL UNION #636, I.B.E.W. IS RIGHT IN ITS CONTEN- TION THAT IT HAS A CONTINUING AGREEMENT WITH THE BOROUGH OF ETOBICOKE (AS DISTINCT FROM THE HYDRO ELECTRIC COMMISSION OF THE SAID BOROUGH), THE BOARD, PURSUANT TO CLAUSE (c) OF SUBSECTION 5 OF SECTION 47A OF THE ACT, HEREBY AMENDS THE BARGAINING UNIT DEFINED IN SUCH COLLECTIVE AGREEMENT SO AS TO EX- CLUDE THEREFROM THE FORMER EMPLOYEES OF THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF NEW TORONTO NOW EMPLOYED IN THE UTILITIES DEPARTMENT OF THE BOROUGH OF ETOBICOKE.

13. FOR PURPOSES OF THE RECORD THE BOARD NOTES THE AGREEMENT OF COUNSEL FOR LOCAL UNION #185 AND THE BOROUGH OF ETOBICOKE THAT THE BOROUGH OF ETOBICOKE IS A NEW ENTITY SEPARATE AND DISTINCT FROM THE FORMER TOWNSHIP OF ETOBICOKE AND THAT THE COLLECTIVE AGREEMENT WHICH THE SAID TOWNSHIP AND THE FORMER MUNICIPALITIES HAD WITH THE VARIOUS LOCALS OF CANADIAN UNION OF PUBLIC EMPLOYEES HAVE CEASED TO OPERATE.

14. AS WAS NOTED ABOVE, LOCAL UNION #185 AND THE BOROUGH OF ETOBICOKE HAVE AGREED ON THE DESCRIPTION OF A BARGAINING UNIT. IT IS FURTHER AGREED THAT THE EMPLOYEES OF THE SURVEY SECTION OF THE BOROUGH'S ENGINEERING DEPARTMENT, PREVIOUSLY COVERED BY A SEPARATE COLLECTIVE AGREEMENT, SHOULD BE

INCLUDED IN THE BARGAINING UNIT WITH THE OTHER EMPLOYEES PREVIOUSLY REPRESENTED BY THE SAID LOCAL. THE UNIT AGREED TO BY THE PARTIES IS IN SUBSTANTIALLY THE SAME TERMS AS THAT CONTAINED IN THE TWO PREVIOUS AGREEMENTS WHICH LOCAL UNION #185 HAD WITH THE FORMER TOWNSHIP OF ETOBICOKE. WHILE THIS BARGAINING UNIT IS NOT DESCRIBED IN TERMS WHICH THE BOARD WOULD NORMALLY EMPLOY IN A CERTIFICATION PROCEEDING, THE BOARD HAS ACKNOWLEDGED THAT DIFFERENT CONSIDERATIONS MAY APPLY IN A CASE UNDER SECTION 47A OF THE ACT. SEE, FOR EXAMPLE, THE OSHAWA WHOLESALE LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1965, P. 584.

HAVING REGARD, THEN, TO ALL THE ABOVE CONSIDERATIONS, THE BOARD DETERMINES THAT THE APPROPRIATE BARGAINING UNIT FOR THE EMPLOYEES IN THE BOROUGH OF ETOBICOKE AFFECTED BY THIS APPLICATION IS AS FOLLOWS:

ALL EMPLOYEES OF THE BOROUGH OF ETOBICOKE EMPLOYED IN THE UTILITIES DEPARTMENT, ROADS DEPARTMENT, GARAGE DEPARTMENT, CONSTRUCTION INSPECTION DEPARTMENT, STORES DEPARTMENT, SIGN SHOP DEPARTMENT, MUNICIPAL PROPERTIES DEPARTMENT, PARKS DEPARTMENT AND THE SURVEY SECTION OF THE ENGINEERING DEPARTMENT, SAVE AND EXCEPT PERSONS ABOVE THE RANK OF WORKING FOREMAN, SALARIED PERSONNEL AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS WITH THE SAID BOROUGH.

FOR PURPOSES OF CLARITY THE BOARD DECLARES:

- (1) THAT ASSISTANT SECTION HEADS IN THE SURVEY SECTION OF THE ENGINEERING DEPARTMENT ARE ABOVE THE RANK OF WORKING FOREMAN.
- (2) THAT THE EXCLUSION OF SALARIED PERSONNEL DOES NOT APPLY TO THE EMPLOYEES OF THE SURVEY SECTION OF THE ENGINEERING DEPARTMENT.

15. THERE REMAINS FOR CONSIDERATION THE QUESTION AS TO WHICH TRADE UNION SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN THE ABOVE DESCRIBED UNIT. WE HAVE ALREADY FOUND IN PARAGRAPHS 11 AND 12 THAT LOCAL UNION #636, I.B.E.W. IS NOT ENTITLED TO BE THE BARGAINING AGENT FOR ANY OF THE EMPLOYEES AFFECTED BY THIS APPLICATION. WE ARE SATISFIED ON THE EVIDENCE BEFORE US THAT, WHETHER OR NOT THERE HAS BEEN A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION WITHIN THE MEANING OF SECTION 47 OF THE LABOUR RELATIONS ACT AS AMONG THE VARIOUS LOCALS OF THE CANADIAN UNION OF PUBLIC EMPLOYEES WHICH ARE PARTIES TO THIS APPLICATION, ALL OF THE SAID LOCALS AS WELL AS THE PARENT UNION HAVE AGREED THAT THE APPLICANT, LOCAL UNION #185, IS THE PROPER BARGAINING AGENT. THE BOROUGH OF ETOBICOKE DOES NOT CONTEST THIS PARTICULAR ASPECT OF THE APPLICATION. WE ARE SATISFIED, FURTHER, THAT TO MAKE ANY OTHER DECLARATION WOULD ON THE EVIDENCE BEFORE US BE HIGHLY IMPRACTICABLE AND UNDESIRABLE FROM THE POINT OF VIEW OF SOUND LABOUR-MANAGEMENT RELATIONS.

16. THE BOARD THEREFORE DECLARES FURTHER THAT THE ETOBICOKE TOWNSHIP CIVIC EMPLOYEES' LOCAL UNION No. 185 C.U.P.C. - C.L.C. IS THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 14 ABOVE.

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

11373-65-M: INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 235 (COMPLAINANT)  
V. TORONTO TRANSIT COMMISSION, AND DIVISION 113, AMALGAMATED TRANSIT UNION  
(RESPONDENTS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: T. E. ARMSTRONG, A. FLOWERS, A. WALKER AND J. HISHON  
FOR THE COMPLAINANT, F. G. HAMILTON, H. E. KING AND L. W. BARDSLEY FOR  
TORONTO TRANSIT COMMISSION, AND L. C. ARNOLD, S. HARE, J. GRAHAM AND E.  
McDERMOTT FOR DIVISION 113, AMALGAMATED TRANSIT UNION.

DECISION OF THE BOARD: MARCH 3, 1967.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 66(6) OF R.S.O. 1960, CH.  
202, FOR REVIEW OF A DIRECTION OF A JURISDICTIONAL DISPUTES COMMISSIONER.  
THE DIRECTION OF THE COMMISSIONER, EXCLUSIVE OF THE REASONS THEREFOR, WAS  
AS FOLLOWS:-

THE RESULT IS THAT THE WEIGHT OF THE EVIDENCE  
AS A WHOLE IS IN FAVOUR OF ASSIGNING THE JOBS  
IN ISSUE AT GREENWOOD TO DIVISION 113 AND THIS  
TRIBUNAL FINDS THAT THE COMMISSION WOULD NOT  
BE JUSTIFIED IN DOING OTHERWISE.

THIS DIRECTION WAS RELEASED BY THE JURISDICTIONAL DISPUTES COMMISSIONER,  
HIS HONOUR JUDGE D. C. THOMAS, ON JANUARY 24TH, 1966. A COPY OF THE  
DIRECTION WAS FILED IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT,  
PURSUANT TO THE BOARD'S ENDORSEMENT DATED MARCH 14TH, 1966.

2. THE JURISDICTIONAL DISPUTES COMMISSIONER WAS APPOINTED UPON  
COMPLAINT MADE BY THE TORONTO TRANSIT COMMISSION (REFERRED TO HEREIN AS THE  
COMMISSION), ONE OF THE RESPONDENTS IN THESE PROCEEDINGS. THE COMPLAINT  
CONCERNED THE ASSIGNMENT OF CERTAIN WORK AT THE COMMISSION'S NEWLY ESTAB-  
LISHED GREENWOOD SHOPS. THE OTHER PARTIES TO THE PROCEEDINGS BEFORE THE  
JURISDICTIONAL DISPUTES COMMISSIONER WERE THE INTERNATIONAL ASSOCIATION  
OF MACHINISTS, LODGE 235 (REFERRED TO HEREIN AS LODGE 235), THE COMPLAIN-  
ANT IN THESE PROCEEDINGS, AND DIVISION 113, AMALGAMATED TRANSIT UNION  
(REFERRED TO HEREIN AS DIVISION 113), THE OTHER RESPONDENT IN THESE  
PROCEEDINGS. THE COMMISSION WAS ~~PARTY TO~~ A COLLECTIVE AGREEMENT WITH EACH  
OF THESE TRADE UNIONS. ~~THE COLLECTIVE AGREEMENT BETWEEN THE COMMISSION~~  
~~AND~~ LODGE 235 CONTAINS THE FOLLOWING PROVISIONS WITH RESPECT TO THE SCOPE  
OF THE BARGAINING UNIT REPRESENTED BY LODGE 235:-



CLAUSE 1. RECOGNITION

THE COMMISSION RECOGNIZES THE DULY ELECTED COMMITTEE OF ITS EMPLOYEES WHO SHALL BE MEMBERS IN GOOD STANDING OF LODGE 235, INTERNATIONAL ASSOCIATION OF MACHINISTS, AS THE SOLE BARGAINING AGENCY FOR ALL EMPLOYEES IN THE OCCUPATIONAL CLASSIFICATIONS OF THE EQUIPMENT DEPARTMENT OF THE COMMISSION AS FOLLOWS:-

<u>OCCUPATIONAL CLASSIFICATIONS</u>	<u>WAGE GROUP</u>
LEAD HAND - MACHINIST	9
TOOL & DIE MAKER	9
GENERAL MACHINIST	8
GENERAL MILLWRIGHT	8
BENCH FITTER	7
AXLE FITTER	7
MACHINIST'S IMPROVER	7
PUNCH PRESS OPERATOR	6
DRILL OPERATOR	6
MILLWRIGHT	6
BENCH REPAIRMAN	6
AXLE REPAIRMAN	6
MACHINE SHOP IMPROVER	5
MACHINE SHOP HELPER	3
SAND BLAST OPERATOR	3

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CLAUSE 3. JURISDICTION

THE WORK JURISDICTION OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS SHALL INCLUDE ALL WORK PERFORMED BY EMPLOYEES IN THE OCCUPATIONAL CLASSIFICATIONS LISTED IN CLAUSE 1, IN THAT PART OF THE GENERAL SHOPS NOW DEFINED AS THE MACHINE SHOP OF THE EQUIPMENT DEPARTMENT OF THE COMMISSION SUBJECT TO THE CONDITIONS IN CLAUSE 2 ABOVE.

[CLAUSE 2 DEALS WITH CERTAIN UNION SECURITY PROVISIONS].

3. THE COLLECTIVE AGREEMENT BETWEEN THE COMMISSION AND DIVISION 113 LACKS EXPRESS PROVISIONS DEFINING THE SCOPE OF THE BARGAINING UNIT. IT DOES CONTAIN A LENGTHY SCHEDULE OF OCCUPATIONAL CLASSIFICATIONS AND WAGE GROUPS OF EMPLOYEES COVERED BY THE AGREEMENT. WHILE THIS SCHEDULE LISTS MANY GROUPS OF CLASSIFICATIONS UNDER THE HEADING "HILLCREST SHOPS", IT DOES NOT CONTAIN ANY REFERENCE TO THE GREENWOOD SHOPS OPERATED BY THE

COMMISSION. THE HILLCREST SHOPS TOGETHER WITH THE GREENWOOD SHOPS AND OTHERS COME UNDER THE EQUIPMENT DEPARTMENT OF THE COMMISSION. THE BARGAINING UNIT REPRESENTED BY DIVISION 113 INCLUDES EMPLOYEES IN THE EQUIPMENT DEPARTMENT AND OTHER DEPARTMENTS OF THE COMMISSION'S OPERATIONS.

4. THE COMPLAINT BEFORE THE JURISDICTIONAL DISPUTES COMMISSIONER RELATED TO THE ASSIGNMENT OF CERTAIN WORK AT THE GREENWOOD SHOPS AS BETWEEN THE TWO UNIONS. THE DIRECTION ABOVE REFERRED TO WAS TO THE EFFECT THAT THE WORK IN QUESTION CAME PROPERLY UNDER THE JURISDICTION OF DIVISION 113. LODGE 235 NOW APPLIES TO THIS BOARD PURSUANT TO SECTION 66(6) FOR REVIEW OF THAT DIRECTION.

5. SECTION 66(6) OF THE LABOUR RELATIONS ACT IN FORCE AT THE TIME OF THIS APPLICATION WAS AS FOLLOWS:-

ANY PERSON, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AFFECTED BY AN INTERIM ORDER OR A DIRECTION OF A COMMISSION MAY APPLY TO THE BOARD, WITHIN SEVEN DAYS AFTER THE RELEASE OF THE INTERIM ORDER OR THE DIRECTION, AND, IF THE BOARD IS SATISFIED THAT THE INTERIM ORDER OR THE DIRECTION PROHIBITS A LAWFUL STRIKE OR LOCK-OUT OR RESTRAINS AN EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION, COUNCIL OF TRADE UNIONS OR AN OFFICER, OFFICIAL OR AGENT OF ANY OF THEM OR AN EMPLOYEE FROM OBSERVING THE PROVISIONS OF A COLLECTIVE AGREEMENT RELATING TO THE ASSIGNMENT OF WORK OR PROHIBITS A TRADE UNION OR COUNCIL OF TRADE UNIONS OR AN EMPLOYER OR EMPLOYERS' ORGANIZATION FROM BARGAINING COLLECTIVELY IN RESPECT OF EMPLOYEES IN A BARGAINING UNIT ON WHOSE BEHALF THE TRADE UNION OR COUNCIL OF TRADE UNIONS IS ENTITLED TO BARGAIN, IT MAY QUASH THE INTERIM ORDER OR THE DIRECTION OR IT MAY ALTER THE BARGAINING UNIT DETERMINED IN A CERTIFICATE OR DEFINED IN A COLLECTIVE AGREEMENT AS IT DEEMS PROPER TO ENABLE THE INTERIM ORDER OR THE DIRECTION TO BE CARRIED INTO EFFECT IN CONFORMITY WITH THE OTHER PROVISIONS OF THIS ACT, AND THE CERTIFICATE OR COLLECTIVE AGREEMENT, AS THE CASE MAY BE, SHALL BE DEEMED TO HAVE BEEN ALTERED IN ACCORDANCE WITH THE BOARD'S DETERMINATION.

AT THE HEARING OF THIS MATTER, ON MARCH 23RD, 1966, THE BOARD MADE THE FOLLOWING RULING WITH RESPECT TO THE NATURE OF THE CASE TO BE MADE OUT BY THE COMPLAINANT IN THESE PROCEEDINGS:-

THE BASIS OF THE BOARD'S JURISDICTION IN A MATTER OF THIS SORT IS AN INTERFERENCE WITH BARGAINING RIGHTS AS THESE ARE SET OUT IN A CERTIFICATE OR COLLECTIVE AGREEMENT. WHILE THIS MATTER WAS, OF COURSE, COINCIDENTALLY BEFORE THE JURISDICTIONAL DISPUTES COMMISSION IN THIS CASE, IT WAS NOT BEFORE THE COMMISSION FOR DETERMINATION. THIS BOARD, ON AN APPLICATION UNDER SECTION 66 (6) HAS AND MUST

EXERCISE ORIGINAL JURISDICTION TO DETERMINE THOSE QUESTIONS WHICH ARISE UNDER THE PROVISIONS OF THE SUBSECTION AND AS TO WHICH THE BOARD MUST BE SATISFIED. IN OUR VIEW, THE COMPLAINANT IS NOW ENTITLED TO PROCEED AND PRESENT SUCH EVIDENCE RELATING TO THESE QUESTIONS AS IT SEES FIT. THE BOARD DOES NOT ACCEDE TO THE RESPONDENT'S OBJECTION AS TO THE SUFFICIENCY OF THE ALLEGATIONS MADE BY THE COMPLAINANT. AS TO THE ORDER OF PROCEEDING WE DIRECT THAT EVIDENCE AND ARGUMENT BE PRESENTED IN THE USUAL COURSE, THAT IS, ALL EVIDENCE ON THE MATTERS AS TO WHICH THE BOARD MUST BE SATISFIED AND ALL EVIDENCE SUPPORTING ANY COURSE OF ACTION URGED ON THE BOARD SHOULD BE PRESENTED AT ONE TIME.

FOLLOWING THE MAKING OF THIS RULING, THE COMPLAINANT ITSELF THEN APPLIED TO THE COURT FOR AN ORDER BY WAY OF CERTIORARI, REMOVING INTO THE SUPREME COURT AND QUASHING BOTH THE DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSIONER AND THE DECISION OF THE BOARD ABOVE REFERRED TO, AND FOR A FURTHER ORDER BY WAY OF PROHIBITION PROHIBITING THE BOARD FROM TAKING ANY FURTHER PROCEEDINGS BY WAY OF REVIEW OF THE DIRECTION. IN DEALING WITH THE APPLICATION MR. JUSTICE JESSUP, AFTER RECITING THE FACTS AND THE ARGUMENTS OF COUNSEL, STATED AS FOLLOWS:-

IN MY VIEW, HOWEVER, SECTION 66 IS CONCERNED ONLY WITH THE ASSIGNMENT OF WORK AND EXPRESSLY CONTEMPLATES THAT SUCH AN ASSIGNMENT MAY BE MADE BY A COMMISSION TO EMPLOYEES OF AN EMPLOYER WHO ARE IN A TRADE UNION WHICH DOES NOT HAVE A REPRESENTATIVE STATUS FOR EMPLOYEES IN THE WORK IN QUESTION. I ARRIVE AT THAT CONCLUSION FROM A CONSIDERATION OF SECTION 66(6) AND PARTICULARLY OF THOSE PARTS OF THE SUBSECTION WHICH I HEREINAFTER ITALICIZE, SUBSECTION 6 PROVIDES:

"ANY PERSON, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AFFECTED BY AN INTERIM ORDER OR A DIRECTION OF A COMMISSION MAY APPLY TO THE BOARD, WITHIN SEVEN DAYS AFTER THE RELEASE OF THE INTERIM ORDER OR THE DIRECTION, AND, IF THE BOARD IS SATISFIED THAT THE INTERIM ORDER OR THE DIRECTION PROHIBITS A LAWFUL STRIKE OR LOCK-OUT OR RESTRAINS AN EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION, COUNCIL OF TRADE UNIONS OR AN OFFICER, OFFICIAL OR AGENT OR ANY OF THEM OR AN EMPLOYEE FROM OBSERVING THE PROVISIONS OF A COLLECTIVE AGREEMENT RELATING TO THE ASSIGNMENT OF WORK OR PROHIBITS A TRADE UNION OR COUNCIL OF TRADE UNIONS OR AN EMPLOYER OR EMPLOYERS' ORGANIZATION FROM BARGAINING COLLECTIVELY

IN RESPECT OF EMPLOYEES IN A BARGAINING UNIT  
ON WHOSE BEHALF THE TRADE UNION OR COUNCIL  
OF TRADE UNIONS IS ENTITLED TO BARGAIN, IT  
MAY QUASH THE INTERIM ORDER OR THE DIRECTION  
OR IT MAY ALTER THE BARGAINING UNIT DETERMINED  
IN A CERTIFICATE OR DEFINED IN A COLLECTIVE  
AGREEMENT AS IT DEEMS PROPER TO ENABLE THE  
INTERIM ORDER OR THE DIRECTION TO BE CARRIED  
INTO EFFECT IN CONFORMITY WITH THE OTHER  
PROVISIONS OF THIS ACT, AND THE CERTIFICATE  
OR COLLECTIVE AGREEMENT, AS THE CASE MAY BE,  
SHALL BE DEEMED TO HAVE BEEN ALTERED IN  
ACCORDANCE WITH THE BOARD'S DETERMINATION."

I ACCORDINGLY HOLD THE ONLY JURISDICTIONAL INQUIRY THE LEARNED COMMISSIONER HAD TO MAKE WAS TO ASCERTAIN WHETHER THE T.T.C. WAS BEING REQUIRED BY A TRADE UNION TO ASSIGN PARTICULAR WORK TO ITS EMPLOYEES WHO WERE MEMBERS OF SUCH TRADE UNION. SUCH INQUIRY WAS MADE. ACCORDINGLY THE COMMISSIONER WAS ACTING WITH JURISDICTION AND THE BOARD HAS AUTHORITY TO REVIEW HIS EXERCISE OF SUCH JURISDICTION.

6. AT THE SUBSEQUENT HEARINGS BEFORE THE BOARD, THE COMPLAINANT LODGE 235 SOUGHT TO SATISFY THE BOARD THAT THE DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSIONER DID RESTRAIN LODGE 235 FROM OBSERVING THE PROVISIONS OF A COLLECTIVE AGREEMENT RELATING TO THE ASSIGNMENT OF WORK, OR THAT IT PROHIBITED LODGE 235 FROM BARGAINING COLLECTIVELY IN RESPECT OF EMPLOYEES IN A BARGAINING UNIT ON WHOSE BEHALF IT WAS ENTITLED TO BARGAIN. IF THE BOARD IS SATISFIED IN THIS RESPECT, THEN IT WOULD HAVE JURISDICTION TO DEAL WITH THE CASE IN ONE OF THE WAYS SET OUT IN THE LATTER PART OF SECTION 66 (6). ON THE FACTS OF THE INSTANT CASE, THE QUESTION WHICH ARISES IS WHETHER THE COLLECTIVE AGREEMENT BETWEEN THE COMMISSION AND LODGE 235 ENTITLES LODGE 235 TO BARGAIN COLLECTIVELY WITH RESPECT TO EMPLOYEES OF THE COMMISSION AT ITS GREENWOOD SHOPS.

7. THE BARGAINING UNIT DESCRIBED IN THAT COLLECTIVE AGREEMENT CONSISTS OF CERTAIN EMPLOYEES IN THE EQUIPMENT DEPARTMENT, AND THE GREENWOOD SHOPS DO FORM A PART OF THE EQUIPMENT DEPARTMENT. HOWEVER, HAVING REGARD TO CLAUSE 3 OF THE COLLECTIVE AGREEMENT, WHICH, IN OUR VIEW, MUST BE READ TOGETHER WITH CLAUSE 1, CONSIDERABLE DOUBT ARISES. IT MAY BE OBSERVED THAT THE JURISDICTIONAL DISPUTES COMMISSIONER HIMSELF FOUND THAT THE BARGAINING RIGHTS OF LODGE 235 WITH RESPECT TO EMPLOYEES OF THE COMMISSION WERE RESTRICTED TO THE HILLCREST SHOPS. AS NOTED IN THE BOARD'S RULING SET OUT ABOVE, THIS MATTER WAS COINCIDENTALLY BEFORE THE JURISDICTIONAL DISPUTES COMMISSIONER, BUT WAS NOT BEFORE HIM FOR DETERMINATION. PUT ANOTHER WAY, THIS BOARD HAS ORIGINAL JURISDICTION TO MAKE SUCH FINDINGS AS MAY BE NECESSARY UNDER SECTION 66(6).

8. IN PREVIOUS COLLECTIVE AGREEMENTS THE BARGAINING RIGHTS OF LODGE 235 HAD BEEN EXPRESSLY RESTRICTED TO THE HILLCREST SHOPS. PRIOR TO 1960 WHAT IS NOW CLAUSE 3 OF THE COLLECTIVE AGREEMENT READ AS FOLLOWS:-



THE WORK JURISDICTION OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS SHALL INCLUDE ALL WORK PERFORMED BY EMPLOYEES IN THE OCCUPATIONAL CLASSIFICATIONS LISTED IN CLAUSE 1, IN THAT PART OF THE GENERAL SHOPS AT HILLCREST NOW DEFINED AS THE MACHINE SHOP OF THE EQUIPMENT DEPARTMENT --(EMPHASIS ADDED).

9. THE DELETION OF THE WORDS "AT HILLCREST" WAS MADE IN ANTICIPATION OF THE ESTABLISHMENT OF THE GREENWOOD SHOPS AND FOR THE PURPOSE OF PROTECTING LODGE 235'S RIGHT TO REPRESENT EMPLOYEES IN THE CLASSIFICATIONS TO WHICH THE AGREEMENT APPLIED WHO MIGHT BE TRANSFERRED FROM HILLCREST TO GREENWOOD. THERE WOULD, OF COURSE, BE NOTHING IMPROPER AND MUCH TO BE DESIRED IN THIS, ALTHOUGH SUCH AN EXPANSION OF THE BARGAINING RIGHTS OF ONE UNION COULD NOT PROPERLY BE ACHIEVED AT THE EXPENSE OF THE EXISTING BARGAINING RIGHTS OF ANOTHER UNION. AT THE TIME THE CHANGE WAS MADE, DIVISION 113 REPRESENTED ALL OTHER EMPLOYEES OF THE COMMISSION (WITH EXCEPTIONS NOT HERE MATERIAL), THE GREENWOOD SHOPS NOT THEN EXISTING. THE EQUIPMENT DEPARTMENT CONTAINED OTHER SHOPS THAN HILLCREST, AND IN THOSE OTHER SHOPS - IN PARTICULAR AT THE PARKDALE SHOP - THERE WERE EMPLOYED PERSONS PERFORMING SOME WORK SIMILAR TO THAT OF EMPLOYEES IN THE LISTED CLASSIFICATIONS WHICH AT HILLCREST WERE REPRESENTED BY LODGE 235. WITH ONE OR TWO SPECIFIC EXCEPTIONS, NOT MATERIAL TO THIS DETERMINATION, THE BARGAINING RIGHTS OF LODGE 235 WERE RESTRICTED TO EMPLOYEES AT HILLCREST AS WELL BEFORE AS AFTER 1960, DESPITE THE DELETION OF THE WORDS "AT HILLCREST" FROM THE COLLECTIVE AGREEMENT. THE JURISDICTION OF LODGE 235, IT MUST BE REMEMBERED, WAS EXPRESSED IN CLAUSE 3 AS INCLUDING EMPLOYEES "IN THAT PART OF THE GENERAL SHOPS NOW DEFINED AS THE MACHINE SHOP OF THE EQUIPMENT DEPARTMENT". AT THE TIME THAT LANGUAGE WAS AGREED TO, IT REFERRED TO THE MACHINE SHOP AT HILLCREST. IT IS LODGE 235'S CONTENTION THAT THE MACHINE SHOP WHICH HAS BEEN ESTABLISHED AT GREENWOOD IS AN EXTENSION OF THE MACHINE SHOP AT HILLCREST. ALTHOUGH THIS MATTER IS NOT FREE FROM DOUBT, THERE WAS SUBSTANTIAL EVIDENCE PRESENTED WHICH WOULD SUPPORT SUCH A CONCLUSION. IT DOES NOT APPEAR, HOWEVER, THAT THE LANGUAGE OF THE COLLECTIVE AGREEMENT IS BROAD ENOUGH TO REFER TO THE MACHINE SHOP NOW ESTABLISHED AT GREENWOOD AS WELL AS TO THE MACHINE SHOP AT HILLCREST. READ LITERALLY, THE AGREEMENT RESTRICTS LODGE 235'S BARGAINING RIGHTS TO "THAT PART OF THE GENERAL SHOPS NOW DEFINED AS THE MACHINE SHOP". THIS LANGUAGE IS QUITE PARTICULAR IN ITS REFERENCE. IT MAY BE THAT WE SHOULD GIVE A LIBERAL READING TO THE LANGUAGE OF A COLLECTIVE AGREEMENT, PARTICULARLY WHERE THE PURPOSE OF THE PARTIES IN DRAFTING THAT LANGUAGE IS CLEAR. HOWEVER, NO MATTER HOW LIBERAL A MEANING WE MAY GIVE TO THE LANGUAGE OF THE AGREEMENT, IT COULD NOT HAVE THE EFFECT OF GRANTING TO ONE UNION BARGAINING RIGHTS HELD BY ANOTHER UNION. THE QUESTION THEN WOULD ARISE WHETHER THE PURPORTED EXTENSION OF LODGE 235'S BARGAINING RIGHTS CONFLICTS WITH THE BARGAINING RIGHTS OF DIVISION 113.

10. THE JURISDICTIONAL DISPUTES COMMISSIONER MADE NO FINDING AS TO THE SCOPE OF THE BARGAINING RIGHTS HELD BY DIVISION 113, AND THE DECISION OF MR. JUSTICE JESSUP WAS TO THE EFFECT THAT NO SUCH FINDING WAS NECESSARY AS THE BASIS OF AN AWARD TO THAT UNION OF JURISDICTION OVER THE WORK IN QUESTION.

THE QUESTION OF THE EXTENT OF THE BARGAINING RIGHTS OF DIVISION 113, WHILE NOT IN ITSELF BEFORE US FOR BINDING DETERMINATION, IS RELEVANT, AS WE HAVE NOTED, TO THE DETERMINATION OF WHETHER LODGE 235 COULD PROPERLY EXPAND ITS BARGAINING RIGHTS SO AS TO INCLUDE EMPLOYEES AT GREENWOOD. THE SCOPE OF THE BARGAINING RIGHTS HELD BY DIVISION 113 MAY BE DEDUCED FROM THE MATERIAL SET OUT IN PARAGRAPH 3 ABOVE. IT IS CLEAR THAT THERE IS NOTHING IN THE COLLECTIVE AGREEMENT BY WHICH DIVISION 113 IS EXPRESSLY RECOGNIZED AS BARGAINING AGENT FOR ANY EMPLOYEES AT GREENWOOD. ON THE MATERIAL BEFORE US, HOWEVER, IT APPEARS THAT DIVISION 113 IS ENTITLED TO BARGAIN FOR ALL EMPLOYEES IN THE EQUIPMENT DEPARTMENT OTHER THAN THOSE REPRESENTED BY LODGE 235, SUBJECT TO EXCEPTIONS NOT MATERIAL, PROVIDED SUCH PERSONS COME WITHIN THE OCCUPATIONAL CLASSIFICATIONS REFERRED TO IN SECTION 7 OF THE COLLECTIVE AGREEMENT BETWEEN DIVISION 113 AND THE COMMISSION. IT WOULD THEN APPEAR, HAVING REGARD TO THE EVIDENCE, THAT SOME (BUT NOT ALL) OF THE WORK CLAIMED BY LODGE 235 AT GREENWOOD WOULD COME WITHIN THE SCOPE OF DIVISION 113'S BARGAINING RIGHTS. TO THIS EXTENT THE ATTEMPTED EXPANSION OF LODGE 235'S RIGHTS WOULD FAIL ON THIS GROUND ALONE.

11. IT IS OUR CONCLUSION, BOTH FROM THE READING OF THE COLLECTIVE AGREEMENT AND HAVING REGARD TO ALL OF THE EXTRINSIC EVIDENCE, THAT THE BARGAINING RIGHTS OF LODGE 235 DO NOT EXTEND TO INCLUDE EMPLOYEES OF THE COMMISSION AT GREENWOOD. IT FOLLOWS THAT THE DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSIONER, WHICH RELATED TO WORK ASSIGNMENTS AT GREENWOOD, DOES NOT HAVE THE EFFECT OF PROHIBITING LODGE 235 FROM BARGAINING COLLECTIVELY WITH RESPECT TO EMPLOYEES IN A BARGAINING UNIT ON WHOSE BEHALF IT IS ENTITLED TO BARGAIN. THE BOARD IS NOT SATISFIED THAT THE BASIS FOR REVIEW OF THE DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSIONER EXISTS. FOR THIS REASON, THE APPLICATION MUST BE DISMISSED.

12. HAVING REGARD, HOWEVER, TO THE CONTENTIOUS NATURE OF THE QUESTION AS TO THE EXTENT OF LODGE 235'S BARGAINING RIGHTS, WE PROPOSE TO DEAL BRIEFLY WITH THIS MATTER ON THE ASSUMPTION THAT LODGE 235'S BARGAINING RIGHTS DID IN FACT EXTEND TO INCLUDE EMPLOYEES AT GREENWOOD. IN SUCH A CASE THE BOARD WOULD HAVE JURISDICTION UNDER SECTION 66(6) TO QUASH THE DIRECTION OR TO ALTER THE BARGAINING UNIT IN ORDER TO ENABLE THE DIRECTION TO BE CARRIED INTO EFFECT. IN THESE CIRCUMSTANCES, THE QUESTION NOW BEFORE US WOULD BE WHETHER OR NOT TO GIVE EFFECT TO THE DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSIONER. AS A PRACTICAL MATTER THIS WOULD INVOLVE THE BOARD'S OWN DECISION AS TO THE PROPRIETY OR DESIRABILITY OF THE DIRECTION. IN OUR VIEW, WHILE THESE PROCEEDINGS ARE NOT PRECISELY ANALOGOUS TO THOSE ON AN APPEAL FROM A DECISION ON A QUESTION OF FACT, NEVERTHELESS, THE DECISION OF A COMMISSIONER OUGHT NOT TO BE SET ASIDE OR RENDERED INEFFECTIVE, EXCEPT WHERE SUBSTANTIAL REASONS THEREFORE ARE PRESENTED. IN THE INSTANT CASE THE JURISDICTIONAL DISPUTES COMMISSIONER, IN DEALING WITH THE QUESTION OF THE COMPETING UNION'S ENTITLEMENT TO JURISDICTION OVER THE WORK IN DISPUTE, CONCLUDED THAT:-

IT IS APPARENT, THEREFORE, THAT THERE IS NO VALID ARGUMENT IN FAVOUR OF ASSIGNING WHEEL PROFILING TO LODGE 235 AT GREENWOOD AS AN INDUSTRIAL UNION ON THE BASIS OF "PRACTICE IN THE AREA."

LIKewise EVIDENCE IN RESPECT TO PARTICULAR SKILLS REQUIRED FOR THE JOBS AT GREENWOOD, INSOFAR AS LODGE 235 SEEKS TO CLAIM THEM AS A CRAFT UNION, IS NEUTRAL, FAVOURING NEITHER UNION MORE THAN THE OTHER.

IN THE RESULT, HE DETERMINED AS ABOVE NOTED THAT "THE WEIGHT OF THE EVIDENCE AS A WHOLE IS IN FAVOUR OF ASSIGNING THE JOBS IN ISSUE AT GREENWOOD TO DIVISION 113 AND THIS TRIBUNAL FINDS THAT THE COMMISSION WOULD NOT BE JUSTIFIED IN DOING OTHERWISE". THE EVIDENCE PRESENTED BEFORE THIS BOARD DOES NOT SATISFY US THAT ANY DIFFERENT CONCLUSION SHOULD BE REACHED. IF, THEREFORE, WE HAD BEEN SATISFIED THAT THE DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSIONER PREVENTED LODGE 235 FROM BARGAINING COLLECTIVELY IN RESPECT OF EMPLOYEES IN A BARGAINING UNIT ON WHOSE BEHALF IT WAS ENTITLED TO BARGAIN, THEN, IN THE EXERCISE OF OUR DISCRETION UNDER SECTION 66(6), WE WOULD HAVE ALTERED THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT BETWEEN THE COMMISSION AND LODGE 235 IN ORDER TO ENABLE THE DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSIONER TO BE CARRIED INTO EFFECT.

13. FOR THE REASONS STATED EARLIER THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 39(3)

11635-66-M: SILVERWOOD DAIRIES, LIMITED, BRANTFORD BRANCH, AND SILVERWOOD EMPLOYEES' ASSOCIATION (BRANTFORD BRANCH) (JOINT APPLICANTS).

BEFORE: J. FINKELMAN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: L. A. MACLEAN, R. WEDGE AND G. HARRISON FOR W. M. LAPIERRE AND MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647; J. P. SANDERSON, J. HOUSTON AND H. SWANSON FOR SILVERWOOD DAIRIES, LIMITED, BRANTFORD BRANCH; AND S. E. WYATT AND J. McMAHON FOR SILVERWOOD EMPLOYEES' ASSOCIATION (BRANTFORD BRANCH).

IN ITS DECISION OF JANUARY 5, 1967 IN THIS MATTER, THE BOARD DISCUSSED THE PRINCIPLES APPLICABLE TO THE POSTING OF NOTICES ADDRESSED TO EMPLOYEES AFFECTED BY AN APPLICATION BEFORE THE BOARD. AFTER DISCUSSING THESE PRINCIPLES, THE BOARD IN THAT DECISION SAID IN PART, "IT IS OUR OPINION THAT AN OPPORTUNITY SHOULD BE AFFORDED TO LAPIERRE TO PRESENT EVIDENCE AS TO HIS CLAIM CONCERNING THE ADEQUACY OF THE POSTING OF THE NOTICES OF THE APPLICATION, SO THAT WE MAY BE ABLE TO DETERMINE WHETHER THE NOTICE THAT WAS GIVEN DID OR DID NOT SATISFY THE PRINCIPLES SET OUT ABOVE". THE MATTER WAS LATER LISTED FOR FURTHER HEARING FOR THE PURPOSE INDICATED AND, AT THAT HEARING, THE PARTIES CALLED AND EXAMINED 11 WITNESSES ON THE ISSUE WITH WHICH WE WERE AT THAT POINT CONCERNED. HAVING CAREFULLY CONSIDERED THE TESTIMONY OF THE WITNESSES AND HAVING OBSERVED THE LOCATION OF THE BULLETIN BOARDS AND THE PHYSICAL LAY-OUT OF THE "PLANT", WE HAVE COME TO THE CONCLUSION THAT THE NOTICES OF THE APPLICATION IN THIS INSTANCE WERE POSTED IN SUCH A MANNER AS TO SATISFY THE PRINCIPLES SET OUT IN OUR DECISION OF JANUARY 5, 1967.

IN VIEW OF THE CONCLUSION AT WHICH WE HAVE ARRIVED ON THE QUESTION OF POSTING, IT BECOMES UNNECESSARY FOR US TO DEAL WITH THE OTHER SUBMISSIONS MADE TO US BY COUNSEL FOR W. M. LAPIERRE AND THE TEAMSTERS UNION AT AN EARLIER STAGE. MANY OF THESE SUBMISSIONS WOULD BE PERTINENT AT THE INITIAL HEARING OF AN APPLICATION FOR EARLY TERMINATION OF AN AGREEMENT IF OBJECTION TO THE BOARD'S CONSENTING TO SUCH EARLY TERMINATION HAD BEEN MADE AT THE PROPER TIME. IT IS NOT OPEN TO LAPIERRE OR, FOR THAT MATTER, TO THE TEAMSTERS UNION TO PRESS THEM ON AN APPLICATION FOR RECONSIDERATION BY THE BOARD OF A DECISION, MADE AFTER DUE NOTICE TO THE EMPLOYEES, CONSENTING TO THE EARLY TERMINATION BY THE PARTIES OF THEIR COLLECTIVE AGREEMENT. THE REQUEST OF LAPIERRE AND THE TEAMSTERS UNION FOR RECONSIDERATION BY THE BOARD OF ITS DECISION OF APRIL 27, 1966 IN THIS MATTER IS THEREFORE DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

12792-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. KILMER VAN NOSTRAND CO. LIMITED (RESPONDENT).

6, THE APPLICANT PROPOSES A BARGAINING UNIT IN TERMS OF ALL CONSTRUCTION LABOURERS EMPLOYED BY THE RESPONDENT IN THE HEAVY CONSTRUCTION INDUSTRY. THE RESPONDENT SUBMITS THAT THE BARGAINING UNIT SHOULD BE DESCRIBED IN TERMS OF ALL CONSTRUCTION LABOURERS EMPLOYED BY THE RESPONDENT IN THE CONSTRUCTION OF BRIDGES AND STRUCTURES ASSOCIATED WITH ROAD PROJECTS. BOTH PROPOSALS WERE CONSIDERED BY THE BOARD IN CROSS TOWN PAVING COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY, 1965, P. 128. SINCE THAT DECISION THE BOARD HAS CONSISTENTLY GRANTED UNITS TO THE PRESENT APPLICANT IN THE TERMS SET OUT IN THAT DECISION. THE ONLY EXCEPTION TO THIS IS THAT IN SOME CASES THE BOARD HAS EXCLUDED SHOP AND YARD EMPLOYEES AS PROPOSED BY BOTH THE APPLICANT AND THE RESPONDENT IN THIS CASE. (MARCH 7, 1967).

12803-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. WEST YORK CONSTRUCTION, DIVISION OF TORYORK SALES LIMITED (RESPONDENT).

5. THE RESPONDENT, A GENERAL CONTRACTOR, EMPLOYED ONLY LABOURERS ON THE DATE OF THE MAKING OF THE APPLICATION. ON OCCASION THE RESPONDENT EMPLOYS CARPENTERS. THE APPLICANT IN THIS CASE IS SEEKING AN ALL EMPLOYEE UNIT. IN WINTER & SON DECIDED IN FEBRUARY OF THIS YEAR, BOARD FILE NO. 12737-66-R, THE BOARD SET OUT ITS VIEWS REGARDING "ALL EMPLOYEE" UNITS IN THE CONSTRUCTION INDUSTRY. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS FURTHER THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. (MARCH 9, 1967).

12815-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) v. FRANK LICARI, DOMINIC LACARI, ANGELO LICARI AND BENNY LICARI CARRYING ON BUSINESS IN PARTNERSHIP AS FRANK LICARI & SONS (RESPONDENT).



4. THE RESPONDENT HAS REQUESTED A HEARING ON THE GROUND THAT THE PARTIES ARE APART ON THE NUMBER OF PERSONS IN THE BARGAINING UNIT AND ON THE FURTHER GROUND THAT NONE OF THE EMPLOYEES ARE PAID-UP MEMBERS OF THE UNION. THE DESCRIPTION OF THE MEMBERSHIP EVIDENCE FILED IN SUPPORT OF THE APPLICATION MAKES IT QUITE CLEAR THAT THE EMPLOYEES IN QUESTION ARE MEMBERS OF THE APPLICANT WITHIN THE MEANING OF THE BOARD'S POLICIES RELATING TO MEMBERSHIP.

(MARCH 13, 1967).

12815-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124, OTTAWA - HULL (APPLICANT) v. FRANK LICARI, DOMINIC LACARI, ANGELO LICARI AND BENNY LICARI CARRYING ON BUSINESS IN PARTNERSHIP AS FRANK LICARI & SONS (RESPONDENT).

1. THE RESPONDENT HAS REQUESTED THAT THE BOARD RECONSIDER ITS DECISION DATED MARCH 13, 1967 IN WHICH THE APPLICANT WAS CERTIFIED AS THE BARGAINING AGENT FOR PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN BOARD AREA No. 15. THE RESPONDENT IS ALLEGING THAT THE SAID CERTIFICATE WAS OBTAINED BY FRAUD IN THAT THE EMPLOYEES CLAIMED BY THE APPLICANT TO BE MEMBERS ARE NOT "BONA FIDE" MEMBERS OF THE UNION.

2. IT SHOULD BE NOTED THAT THE BOARD'S STANDARDS RESPECTING PROOF OF MEMBERSHIP ARE SATISFIED WHERE AN EMPLOYEE HAS MADE APPLICATION TO JOIN A TRADE UNION AND HAS PAID AT LEAST \$1.00 IN SUPPORT OF HIS APPLICATION. IT WOULD APPEAR FROM THE RESPONDENT'S ALLEGATIONS THAT THERE IS NO QUESTION THAT MONEY WAS PAID BY THE EMPLOYEES IN QUESTION TO THE UNION WITHIN A SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF MAKING OF THE APPLICATION. HOWEVER, HAVING REGARD TO THE NATURE OF THE MEMBERSHIP EVIDENCE FILED, NAMELY, CERTIFICATES OF MEMBERSHIP, AND TO THE STATEMENTS CONTAINED IN THESE CERTIFICATES, AN EXPLANATION MAY BE REQUIRED OF THE APPLICANT IF THE RESPONDENT ESTABLISHES THE FACTS OUTLINED IN ITS LETTER OF MARCH 22. THE SAME MAY BE TRUE OF THE APPLICATION FOR MEMBERSHIP FILED BY THE APPLICANT FOR ONE EMPLOYEE.

3. IN THESE CIRCUMSTANCES THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR HEARING IN OTTAWA. AT THAT HEARING THE RESPONDENT WILL BE GIVEN AN OPPORTUNITY TO PRESENT SUCH EVIDENCE AS IT SEES FIT IN SUPPORT OF ITS ALLEGATIONS AND THE APPLICANT WILL BE GIVEN THE RIGHT TO MAKE FULL DEFENCE.

(MARCH 28, 1967).

12826-66-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. DUFFERIN MATERIAL & CONSTRUCTION LTD. (RESPONDENT).

4. THE RESPONDENT HAS REQUESTED A HEARING IN CONNECTION WITH THE GEOGRAPHIC AREA PROPOSED BY THE APPLICANT. IN VIEW OF THE FACT THAT THE BOARD IS GRANTING THE AREA PROPOSED BY THE RESPONDENT, THE BOARD DOES NOT DEEM IT NECESSARY TO HOLD A HEARING IN THIS CASE. REFERENCE IS MADE TO SECTION 75(9A) OF THE LABOUR RELATIONS ACT.

(MARCH 15, 1967).

12831-66-R: LOCAL UNION 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. STOIC CONSTRUCTION LTD. (RESPONDENT).

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

IN MAKING THE ABOVE FINDING, THE BOARD DID NOT TAKE INTO CONSIDERATION THE TWO CERTIFICATES INDICATING MEMBERSHIP IN A LOCAL UNION OTHER THAN THE APPLICANT.

(MARCH 17, 1967).

12865-66-R: WOOD WIRE AND METAL LATHERS INTERNATIONAL UNION LOCAL 423, OTTAWA, ONTARIO - HULL, QUEBEC (APPLICANT) V. ROLAND LEFEBVRE LATHING LTD., 30 SAVARD AVENUE, OTTAWA 7, ONTARIO (RESPONDENT) V. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (INTERVENER).

5. THE INTERVENTION IN THIS CASE IS BASED ON THE FACT THAT THE INTERVENER HAS A SUBSISTING COLLECTIVE AGREEMENT WITH THE RESPONDENT UNDER WHICH CERTAIN WORK IS TO BE PERFORMED BY MEMBERS OF THE INTERVENER. WHILE THE INTERVENER DOES NOT OBJECT TO THE APPLICATION, IT SUBMITS THAT THE BARGAINING UNIT SHOULD BE DESCRIBED IN SUCH A WAY AS TO EXCLUDE CERTAIN TYPES OF WORK WHICH, IT IS ALLEGED, UNDER THE TERMS OF THE SAID AGREEMENT, IS TO BE PERFORMED BY ITS MEMBERS. ASSUMING, BUT WITHOUT DECIDING, THAT THE AGREEMENT IN QUESTION COVERS THE WORK REFERRED TO IN THE INTERVENTION, THE BARGAINING RIGHTS OF THE INTERVENER WILL BE PROTECTED IF WE EXCLUDE FROM THE BARGAINING UNIT IN THIS CASE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER.

(MARCH 23, 1967).

#### ADDENDA

THE FOLLOWING CASES WERE INADVERTENTLY OMITTED FROM THE OCTOBER 1966, AND THE NOVEMBER 1966 MONTHLY REPORTS:

12089-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1190 (APPLICANT) V. GOLDLIST CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: A. E. GOLDEN AND F. MASARO FOR THE APPLICANT AND W. PHELPS AND A. LANDAU FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 6, 1967.

IN THIS APPLICATION FOR CERTIFICATION, THE RESPONDENT CONTENDS IT IS NOT THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THE APPLICATION. RATHER, THE RESPONDENT SAYS, THERE ARE TWO SEPARATE PROJECTS AND TWO SEPARATE EMPLOYERS, NAMELY, LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS. THESE TWO CONCERNS ARE CORPORATE PARTNERSHIPS CONSTITUTED AS FOLLOWS:

(A) LAURELCREST INVESTMENTS (HEREINAFTER REFERRED TO AS "LAURELCREST") IS A PARTNERSHIP CONSISTING OF THE NAMED RESPONDENT, GOLDLIST CONSTRUCTION LIMITED (HEREINAFTER REFERRED TO AS "GOLDLIST"), RADEEN INVESTMENTS LIMITED AND TEDDINGTON LIMITED. IT WOULD APPEAR THAT RADEEN INVESTMENTS LIMITED IS OWNED AND CONTROLLED BY GOLDLIST. THIS IS NOT TRUE OF TEDDINGTON LIMITED WHICH IS NOT PART OF THE GOLDLIST GROUP OF ENTERPRISES. GOLDLIST HAS A 25% INTEREST IN THE PARTNERSHIP, RADEEN INVESTMENTS LIMITED A 10% INTEREST, AND TEDDINGTON LIMITED A 65% INTEREST.

(B) MARTINWAY INVESTMENTS (HEREINAFTER REFERRED TO AS "MARTINWAY") IS A PARTNERSHIP CONSISTING OF GOLDLIST AND MARKBOROUGH PROPERTIES LTD. (HEREINAFTER REFERRED TO AS "MARKBOROUGH"). LIKE TEDDINGTON, MARKBOROUGH IS NOT PART OF THE GOLDLIST GROUP OF ENTERPRISES. GOLDLIST HAS A 30% INTEREST IN THIS PARTNERSHIP AND MARKBOROUGH'S INTEREST IS 70%. IT SHOULD PERHAPS BE POINTED OUT THAT THE IMPRESSION LEFT AT THE HEARING THAT GOLDLIST IS THE PRESENT OWNER OF THE "WESTWAY", ONE OF THE PROPERTIES INVOLVED IN THIS APPLICATION, IS NOT CORRECT. EXHIBIT 12, A CERTIFIED COPY OF REGISTRAR'S ABSTRACT OF TITLE, INDICATES THAT MARKBOROUGH CONVEYED ONLY A THREE-TENTHS INTEREST IN THE SAID PROPERTY TO GOLDLIST. THIS WOULD BE CONSISTENT WITH THE RESPECTIVE INTERESTS OF THE PARTNERS SET OUT ABOVE.

COUNSEL FOR THE APPLICANT SUBMITS THAT GOLDLIST IS THE CONSTRUCTING ARM OF BOTH PARTNERSHIPS, THAT THE OTHER PARTNERS ARE CONCERNED WITH INVESTMENT ONLY, AND THAT THE BOARD SHOULD LOOK BEYOND THE PARTNERSHIPS AND DECLARE THAT GOLDLIST IS THE EMPLOYER OF THE EMPLOYEES EMPLOYED ON THE SEVERAL JOB SITES. IT IS CLEAR THAT THE EMPLOYEES ARE PAID BY CHEQUES HEADED "GOLDLIST PAYROLL ACCOUNT" AND THAT THE NAME OF THE ACCOUNT IS "GOLDLIST CONSTRUCTION LIMITED - GOLDLIST PAYROLL ACCOUNT". FURTHER, DEDUCTIONS FOR UNEMPLOYMENT INSURANCE, WORKMEN'S COMPENSATION, INCOME TAX, CANADA PENSION PLAN ETC. ARE PAID FROM THE SAME ACCOUNT AND, ON THE FORMS ACCOMPANYING SUCH PAYMENTS, GOLDLIST IS SHOWN AS THE EMPLOYER. HOWEVER, AS APPEARS FROM THE BOARD'S DECISION IN NATIONAL UNION OF PUBLIC EMPLOYEES V. MUNICIPALITY OF METROPOLITAN TORONTO, 61 C.L.L.C. ¶16, 214, THE FACTOR OF PAYMENT IS NOT NECESSARILY DETERMINATIVE OF AN EMPLOYMENT RELATIONSHIP. IN THE PRESENT CASE IT IS CLEAR THAT THE MONIES PAID INTO THE GOLDLIST PAYROLL ACCOUNT TO SATISFY THE WAGE AND OTHER DEDUCTION CHEQUES DRAWN ON THE ACCOUNT COME FROM LAURELCREST AND MARTINWAY AND NOT FROM GOLDLIST EXCEPT IN SO FAR AS THAT COMPANY HAS AN INTEREST IN THE SAID PARTNERSHIPS.

IN MANY RESPECTS WHAT THE APPLICANT IS ARGUING IN THIS CASE IS SIMILAR TO THE POSITION TAKEN BY THE APPLICANT IN THE LOBLAW GROCETERIAS Co. LIMITED CASE, (1965) C.C.H. CANADIAN LABOUR LAW REPORTER, VOL 1, 916,078. IN THE LATTER CASE THE APPLICANT WAS SEEKING TO PERSUADE THE BOARD TO "PIERCE THE CORPORATE VEIL". IN THE PRESENT CASE THE APPLICANT IS SEEKING TO "PIERCE THE PARTNERSHIP VEIL" IN THE SENSE OF FIXING THE EMPLOYER-EMPLOYEE RELATIONSHIP ON TO A SINGLE PARTNER. WHILE, PERHAPS, IN THIS SITUATION THERE IS NO HALLOWED LINE OF AUTHORITY STANDING IN THE WAY OF MAKING SUCH A FINDING AS THERE IS IN THE CASE OF THE "CORPORATE VEIL", NEVERTHELESS IT SEEMS TO US THAT MANY OF THE PRINCIPLES CONSIDERED AND APPLIED IN THE LOBLAW GROCETERIAS CASE ARE APPLICABLE TO THE INSTANT CASE.

AFTER COMPARING THE EVIDENCE IN THE TWO CASES RESPECTING CONTRACTS OF EMPLOYMENT HIRING PRACTICES, DISCIPLINE, TRANSFERS, LAY-OFFS AND, IN GENERAL, DIRECTION AND CONDUCT OF THE WORK FORCES, IT IS ABUNDANTLY CLEAR THAT THE PRESENT APPLICANT IS IN A FAR LESS FAVOURABLE POSITION THAN WAS THE UNSUCCESSFUL APPLICANT IN THE LOBLAW GROCETERIAS CASE.

IN THE RESULT, AND AFTER HAVING CAREFULLY CONSIDERED ALL OF THE EVIDENCE AND THE ARGUMENTS OF COUNSEL, WE FIND THAT THE NAMED RESPONDENT IS NOT THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THIS APPLICATION IN THE SENSE OF BEING THEIR SOLE EMPLOYER. ON THE CONTRARY, WE FIND THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE EMPLOYEES WERE EMPLOYED BY EITHER LAURELCREST OR MARTINWAY, CORPORATE PARTNERSHIPS IN WHICH, OF COURSE, THE NAMED RESPONDENT IS AN ACTIVE PARTNER.

WHILE AMERICAN AUTHORITIES WERE TO A LARGE EXTENT DISTINGUISHED IN THE LOBLAW GROCETERIAS CASE, IT IS NOT WITHOUT INTEREST TO OBSERVE THAT THE NATIONAL LABOR RELATIONS BOARD HAS COME TO A SIMILAR CONCLUSION IN FACT SITUATIONS SOMEWHAT COMPARABLE TO THIS CASE. SEE W.W. HOLMES, (1949) 83 N.L.R.B. 49; WILLCOX CONSTRUCTION Co., (1949) 87 N.L.R.B. 371.

BEFORE LEAVING THIS ASPECT OF THE CASE WE WISH TO MAKE IT CLEAR THAT THE COMPLEXITIES OF MODERN BUSINESS ORGANIZATION, INCLUDING NEW AND EFFICIENT ACCOUNTING PRACTICES AND PROCEDURES, DO NOT LESSEN THE NECESSITY OF THE CONTRACTUAL OR CONSENSUAL ELEMENT IN THE EMPLOYER-EMPLOYEE RELATIONSHIP AS DESCRIBED IN CONSIDERABLE DETAIL IN THE LOBLAW CASE. MORE SPECIFICALLY, A SIMPLE BOOK TRANSACTION BY EMPLOYER A WHEREBY AN EMPLOYEE IS TRANSFERRED TO THE WORK FORCE OF EMPLOYER B, OR A DIRECTION BY A FOREMAN OF EMPLOYER A TO AN EMPLOYEE TO REPORT FOR WORK ON THE PROJECT OF EMPLOYER B DO NOT BY THEMSELVES MAKE THE EMPLOYEE IN QUESTION AN EMPLOYEE OF EMPLOYER B FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. SOME OF THE EVIDENCE HEARD IN THIS CASE LEAVES US WITH THE DISTINCT IMPRESSION THAT, FOR EXAMPLE, IN THE CASE OF TRANSFERS, THE CONSENSUAL ELEMENT SO NECESSARY IN THE EMPLOYER-EMPLOYEE RELATIONSHIP IS OVERLOOKED OR FORGOTTEN IN THE DRIVE TO CENTRALIZE ACCOUNTING PROCEDURES.

THERE REMAINS FOR CONSIDERATION THE FUTURE COURSE OF THESE PROCEEDINGS. THIS IS A CASE IN WHICH, CLEARLY, A BONA FIDE MISTAKE WAS MADE WITH THE RESULT THAT A PROPER PARTY WAS NOT NAMED AS RESPONDENT. THE BOARD THEREFORE DIRECTS THAT THE NAME "GOLDLIST CONSTRUCTION LIMITED" BE STRUCK FROM THE STYLE OF CAUSE AND SUBSTITUTED BY THE NAMES "LAURELCREST INVESTMENT" OR "MARTINWAY INVESTMENTS" AS THE CASE MAY BE.



THE BOARD FURTHER DIRECT THE REGISTRAR TO SERVE LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS WITH NOTICES OF THIS APPLICATION.

THE BOARD FURTHER DIRECTS THAT LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS POST COPIES OF THIS DECISION IN PROMINENT LOCATIONS ON THE PROJECTS AFFECTED BY THE APPLICATION.

THE BOARD FURTHER DIRECTS THAT ANY REPLIES OF LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS BE FILED WITH THE BOARD NOT LATER THAN FRIDAY, OCTOBER 14, 1966.

11831-66-R: UNITED BROTHERHOOD OF CARPETERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. UNI-FORM BUILDERS LTD. (RESPONDENT) v. CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. (INTERVENER).

- AND -

11846-66-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIV. No. 1, N.C.C.L. (APPLICANT) v. UNI-FORM BUILDERS LTD. (RESPONDENT) v. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 527 (INTERVENER #1) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER #2).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF G. W. REED, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER: (NOVEMBER 4,

1. IN THESE SEVERAL APPLICATIONS FOR CERTIFICATION THE PARTIES HAVE AGREED THAT THE BOARD SHOULD MAKE CERTAIN PRELIMINARY DECISIONS BEFORE PROCEEDING FURTHER WITH THE APPLICATION. THE QUESTIONS THUS BEFORE THE BOARD RELATE TO THE STATUS OF FOUR EMPLOYEES, L. JENSEN BILL, RHENALD CHARRON, JOHN ARCHER AND ROMEO LATOUR. IN SO FAR AS BILL AND CHARRON ARE CONCERNED, THE QUESTION IS WHETHER THEY EXERCISE MANAGERIAL FUNCTIONS; IN THE CASE OF ARCHER AND LATOUR THE PROBLEM IS WHETHER THEY ARE APPROPRIATE FOR INCLUSION IN A CONSTRUCTION LABOURERS' BARGAINING UNIT. THE BOARD HAS GIVEN MUCH ANXIOUS CONSIDERATION TO THE EVIDENCE BEFORE US AND TO THE REPRESENTATIONS OF THE PARTIES ON THESE MATTERS.

2. IN THE CASE OF ARCHER AND LATOUR, WE HAVE CONCLUDED THAT BOTH SHOULD BE REGARDED AS CONSTRUCTION LABOURERS ELIGIBLE FOR INCLUSION IN A CONSTRUCTION LABOURERS' BARGAINING UNIT. WHILE IT IS TRUE THAT DURING THE WEEK WHEN THE VARIOUS APPLICATIONS WERE FILED THE TWO MEN IN QUESTION WERE "WORKING ON STEEL", THE POLICY OF THE BOARD IS TO HAVE REGARD TO THE OVERALL EMPLOYMENT STATUS OF EMPLOYEES. IN OTHER WORDS, WHERE EMPLOYEES ARE ENGAGED IN MORE THAN ONE TRADE FOR A PARTICULAR EMPLOYER THE BOARD, IN SEEKING TO CLASSIFY THEM FOR PURPOSES OF AN APPLICATION FOR CERTIFICATION, LOOKS TO THE TRADE IN WHICH THEY SPEND THE MAJORITY OF THEIR TIME AND NOT MERELY TO WHAT THEY WERE DOING ON THE DATE OF THE MAKING OF THE APPLICATION. SEE JOHNSON-KIEWIT SUBWAY CORPORATION, O.L.R.B. MONTHLY REPORT, JUNE 1966, P. 182.

ON THIS BASIS ARCHER CLEARLY FALLS INTO THE CATEGORY OF A CONSTRUCTION LABOURER AND NOT THAT OF RODMAN. WHILE LATOUR "THOUGHT THAT HE WOULD

WORK MORE ON STEEL THAN ON THE OTHER WORK" THIS SEEMS UNLAIKELY, HAVING REGARD TO THE EVIDENCE AS TO THE AMOUNT OF STEEL WORK CARRIED ON BY THE RESPONDENT AND TO THE LENGTH OF LATOUR'S EMPLOYMENT WITH RESPONDENT. IN ANY EVENT, HE IS CLASSED AS A LABOURER AND HIS JOB WHEN WORKING ON STEEL IS MERELY AS ARCHER'S HELPER AND, IN THE CIRCUMSTANCES, AND HAVING REGARD TO OUR FINDING WITH RESPECT TO ARCHER, WE ARE NOT PREPARED TO FIND THAT LATOUR IS OTHER THAN A CONSTRUCTION LABOURER.

3. WE TURN NOW TO DEAL WITH THE STATUS OF BILL AND CHARRON. WHILE ON THE EVIDENCE BEFORE US, THEIR DUTIES AND RESPONSIBILITIES DO NOT COINCIDE IN ALL RESPECTS, THEY OCCUPY SUBSTANTIALLY THE SAME POSITION IN RESPONDENT'S ORGANIZATIONAL SET-UP. BOTH ARE FOREMEN WHO WORK TO SOME EXTENT WITH THE TOOLS OF THE CARPENTRY TRADE. CHARRON TESTIFIED THAT HE WOULD AVERAGE 15 HOURS A WEEK WORKING WITH THE TOOLS. BILL'S EVIDENCE WAS LESS CLEAR. HE TESTIFIED HE WORKED AT LEAST THREE HOURS EVERY DAY WITH THE TOOLS AND SOMETIMES SIX OR EIGHT HOURS. HE ESTIMATED THAT THERE WOULD BE LESS TIME SPENT IN "DIRECTING THAN IN WORKING WITH THE TOOLS". ON THE OTHER HAND, HE STATED THAT "RENE DUQUETTE IS A FOREMAN AND WORKS ONCE IN A WHILE TOO AS FAR AS HE KNOWS." (EMPHASIS ADDED) BOTH CHARRON AND BILL ARE SALARIED AND THEY SUPERVISE CARPENTERS AND LABOURERS EMPLOYED BY THE RESPONDENT. ON OR ABOUT THE DATE OF THE MAKING OF THE APPLICATION THE NUMBER OF EMPLOYEES DIRECTLY SUPERVISED BY THEM WAS DOWN TO A BARE MINIMUM. ON THE EVIDENCE BEFORE US, NEITHER CHARRON NOR BILL APPEAR TO HAVE THE POWER TO HIRE, FIRE OR LAY OFF, ALTHOUGH IT IS A FAIR INFERENCE THAT THEY IN FACT DO HAVE THE POWER TO MAKE EFFECTIVE RECOMMENDATIONS WITH RESPECT TO THESE MATTERS. AGAIN, NEITHER APPEARS TO HAVE THE RIGHT TO ORDER OVER-TIME WORK.

IF THESE WERE ALL THE DUTIES AND RESPONSIBILITIES OF CHARRON AND BILL, THEN IT SEEMS CLEAR THAT THEY WOULD BE FOREMEN OF A KIND USUALLY INCLUDED IN A CONSTRUCTION INDUSTRY BARGAINING UNIT UNDER THE DESIGNATION OF WORKING FOREMEN, EVEN THOUGH THEY DO NOT WORK WITH THE TOOLS AS MUCH AS THE ORDINARY WORKING FOREMAN OR "STRAW BOSS" OR PUSHER OVER A GROUP OF CARPENTERS OR BRICKLAYERS OR RODMEN. AT THIS JUNCTURE, HOWEVER, IT IS WORTH REPEATING WHAT THE BOARD SAID IN PRE-CON MURRAY LIMITED, O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 328:

....ASSUMING FOR PRESENT PURPOSES THAT WE ARE DEALING WITH A CRAFT BARGAINING UNIT THE NORMAL EXCLUSION IS NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. PUT IN ANOTHER WAY, WORKING FOREMEN ARE USUALLY INCLUDED IN SUCH UNITS. HOWEVER AS IN THE CASE OF THE EXCLUSION OF FOREMEN IN INDUSTRIAL UNITS THIS IS A POLICY BASED ON LONG EXPERIENCE THAT PERSONS SO DESIGNATED I.E. NON-WORKING FOREMEN IN CRAFT UNITS AND FOREMEN IN INDUSTRIAL UNITS NORMALLY EXERCISE MANAGERIAL FUNCTIONS WHILE WORKING FOREMEN IN CRAFT UNITS AND PERSONS BELOW THE RANK OF FOREMEN IN INDUSTRIAL UNIT E.G. ASSISTANT FOREMEN, NORMALLY DO NOT EXERCISE SUCH FUNCTIONS. ON OCCASION HOWEVER THE BOARD HAS EXCLUDED ASSISTANT FOREMEN IN INDUSTRIAL UNITS AND SO-CALLED

WORKING FOREMEN IN CRAFT UNITS BECAUSE IN THE PARTICULAR CASE THE BOARD HAS FOUND THAT THE INDIVIDUAL CONCERNED EXERCISED MANAGERIAL FUNCTIONS. IN ALL CASES THEREFORE THE QUESTION ALWAYS IS DOES A PERSON EXERCISE MANAGERIAL FUNCTIONS BECAUSE AS POINTED OUT BY COUNSEL FOR THE RESPONDENT THIS IS THE SOLE QUESTION BEFORE THE BOARD UNDER SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

NOW, AS APPEARS FROM THE ABOVE ACCOUNT OF BILL'S AND CHARRON'S DAILY ACTIVITIES, NEITHER IS FULLY OCCUPIED IN WORKING WITH THE TOOLS OF THE TRADE OR IN SUPERVISING THE CARPENTER AND LABOUR EMPLOYEES OF THE RESPONDENT. THIS IS ACCOUNTED FOR BY THE FACT THAT EACH IS IN CHARGE, ON A DAY-TO-DAY BASIS, OF PROJECTS ON WHICH THE RESPONDENT IS THE GENERAL CONTRACTOR. WHILE IT IS TRUE THAT STENGER, THE COMPANY PRESIDENT, APPEARS ON THE JOB ON WHICH CHARRON IS THE FOREMAN, THERE IS NO SUGGESTION THAT STENGER IS PRESENT FOR ANY SUBSTANTIAL PERIOD OF TIME. IN FACT, THE EVIDENCE OF CHENIER SUGGESTS THAT STENGER IS NOT OFTEN PRESENT. CHARRON REPORTS DIRECTLY TO STENGER AND NOT, APPARENTLY, TO ALBERT OR GOLD WHO ARE CLASSED AS GENERAL FOREMEN OR SUPERINTENDENTS. SIMILARLY, BILL STATED THAT HE REPORTED TO STENGER DIRECTLY THOUGH HE LATER QUALIFIED THIS BY SAYING THAT HE REPORTED TO GOLD. WHILE GOLD IS IN CHARGE OF THE PROJECT ON WHICH BILL IS THE FOREMAN AND ATTENDS THE WEEKLY SITE MEETINGS (ALONG WITH BILL) AT WHICH THE SUB TRADES, ENGINEERS AND ARCHITECTS ARE ALSO REPRESENTED, ACCORDING TO BILL, GOLD IS ON THE JOB ONLY "EVERY ONCE IN A WHILE". FURTHER, WHILE GOLD STATED THAT BILL HAD DONE A CONSIDERABLE AMOUNT OF CARPENTRY WORK ON THE JOB, HE ALSO WENT ON TO SAY "PLUS LOOKING AFTER THE WHOLE JOB AT THE SAME TIME".

AS JOB FOREMEN BOTH BILL AND CHARRON DIRECT THE OTHER TRADES ON THE JOB AND CHECK THEIR WORK. THIS INVOLVES CO-ORDINATING THE WORK OF THE VARIOUS TRADES ACCORDING TO THE PLANS, CHECKING WITH THE ARCHITECT AND, IN GENERAL, BEING RESPONSIBLE FOR THE DAY TO DAY PROGRESS OF THE WHOLE JOB, SUBJECT OF COURSE TO GENERAL SUPERVISION FROM A HIGHER LEVEL OF MANAGEMENT. PERHAPS THE POSITION OF BILL IS BEST DESCRIBED BY DESJARDINS, THE SUPERINTENDENT FOR THE PLASTERING SUB-CONTRACTOR ON THE PROJECT. HE STATED THAT HE "KNEW THAT THE REPRESENTATIVE OF THE RESPONDENT COMPANY IS BILL. HE IS THE CHAP [DESJARDINS] GOES TO SEE THAT EVERYTHING IS SATISFACTORY TO THE GENERAL CONTRACTOR. IF NOT, BILL TELLS [DESJARDINS] WHAT TO DO OR WHAT TO CHANGE AND SO ON." IN OUR VIEW THE EVIDENCE RELATING TO CHARRON PUTS HIM IN THE SAME POSITION AS BILL AND SUCH RESPONSIBILITIES MAKE BILL AND CHARRON PART OF THE RESPONDENT'S MANAGEMENT "TEAM".

4. IN SUM THEN, WHILE THE EVIDENCE RESPECTING THE DUTIES AND RESPONSIBILITIES OF BILL AND CHARRON IS NOT COMPLETELY SIMILAR AND FURTHER, WHILE IN CERTAIN RESPECTS THEY DO NOT APPEAR TO HAVE SOME OF THE POWERS NORMALLY POSSESSED BY MANAGEMENT PERSONNEL IN THE CONSTRUCTION INDUSTRY, ON CONSIDERING ALL THE EVIDENCE RELATING TO THEIR DUTIES, RESPONSIBILITIES AND STATUS, IT IS OUR CONSIDERED OPINION THAT BOTH CHARRON AND BILL EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. ACCORDINGLY, NEITHER WOULD BE INCLUDED IN ANY BARGAINING UNITS WHICH THE BOARD MAY ULTIMATELY DEEM TO BE APPROPRIATE IN THE SEVERAL APPLICATIONS BEFORE US.

5. THE BOARD NOTES THAT THIS CASE CANNOT PROCEED FURTHER UNTIL THE PARTIES HAVE MET TO CONSIDER THE FUTURE COURSE OF THE PROCEEDINGS.

DECISION OF BOARD MEMBER R. W. TEAGLE: NOVEMBER 4, 1966).

I CONCUR IN THE FINDING OF MY COLLEAGUES THAT NEITHER BILL NOR CHARRON WOULD BE INCLUDED IN ANY BARGAINING UNITS WHICH THE BOARD MAY ULTIMATELY DEEM TO BE APPROPRIATE IN THESE MATTERS. HOWEVER, I WISH TO MAKE IT CLEAR THAT I DO NOT REGARD THIS FINDING AS NECESSARILY DETERMINATIVE OF ANY OF THE OTHER ISSUES THAT ARE STILL OUTSTANDING.



STATISTICAL TABLES FOR MARCH 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	MARCH 1967	1ST 12 MONTHS OF FISCAL YEAR 1966-67	1965-66
I. CERTIFICATION	87	938	987
II. DECLARATION TERMINATING BARGAINING RIGHTS	3	40	68
III. DECLARATION OF SUCCESSOR STATUS	-	14	25
IV. DECLARATION THAT STRIKE UNLAWFUL	1	30	50
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	4
VI. CONSENT TO PROSECUTE	4	88	91
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	21	144	113
VIII. MISCELLANEOUS	<u>3</u>	<u>63</u>	<u>54</u>
TOTAL	<u>119</u>	<u>1318</u>	<u>1392</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	MARCH 1967	1ST 12 MONTHS OF FISCAL YEAR 1966-67	1965-66
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	90	955	1130

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

	NUMBER DISPOSED OF		
	MARCH 1967	1ST 12 MONTHS OF 1966-67	FISCAL YEAR 1965-66
I. CERTIFICATION	76	949	998
II. DECLARATION TERMINATING BARGAINING RIGHTS	2	38	70
III. DECLARATION OF SUCCESSOR STATUS	3	13	29
IV. DECLARATION THAT STRIKE UNLAWFUL	1	29	50
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	4
VI. CONSENT TO PROSECUTE	10	84	91
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	31	137	114
VIII. MISCELLANEOUS	5	70	70
TOTAL	<u>128</u>	<u>1321</u>	<u>1426</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>MARCH 1ST 12 MTHS FISCAL YR.</u>			<u>MARCH 1ST 12 MTHS FISCAL YR</u>		
	<u>1967</u>	<u>1966-67</u>	<u>1965-66</u>	<u>1967</u>	<u>1966-67</u>	<u>1965-66</u>
<u>I. CERTIFICATION</u>						
GRANTED	67	705	731	1898	4965	20529
DISMISSED	4	159	180	204	12308	27189
WITHDRAWN	5	85	87	179	1450	4294
TOTAL	<u>76</u>	<u>949</u>	<u>998</u>	<u>2281</u>	<u>18723</u>	<u>52012</u>
<u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	2	25	29	196	832	1646
DISMISSED	-	12	36	-	297	796
WITHDRAWN	-	1	5	-	203	251
TOTAL	<u>2</u>	<u>38</u>	<u>70</u>	<u>196</u>	<u>1332</u>	<u>2693</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTAL FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>MARCH 1ST 12 MONTHS OF FISCAL YEAR</u>		
		<u>1967-</u>	<u>1966-67</u>	<u>1965-66</u>
I.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	1	6	8
	DISMISSED	=	2	4
	WITHDRAWN	-	21	38
	TOTAL	<u>1</u>	<u>29</u>	<u>50</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	4
	WITHDRAWN	-	1	-
	TOTAL	<u>-</u>	<u>1</u>	<u>4</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	9	16	31
	DISMISSED	1	15	15
	WITHDRAWN	-	51	45
	TOTAL	<u>10</u>	<u>82</u>	<u>91</u>



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MARCH 1ST 1967	12 MONTHS OF FISCAL YEAR 1966-67	1965-66
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	21	24
POST-HEARING VOTE	5	39	33
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	10	7
POST-HEARING VOTE	-	53	42
BALLOTS NOT COUNTED	-	-	3
TOTAL	<u>8</u>	<u>123</u>	<u>109</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MARCH 1ST 1967	12 MONTHS OF FISCAL YEAR 1966-67	1965-66
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>19</u>	<u>21</u>
TOTAL	<u>2</u>	<u>23</u>	<u>22</u>

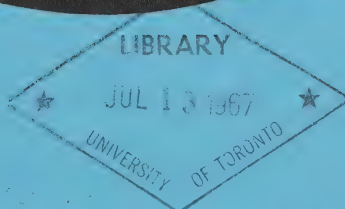
\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1967

BARGAINING AGENTS CERTIFIED DURING APRIL

No Vote Conducted

12553-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND IMPLEMENT WORKERS OF AMERICA (U.A.W.) (APPLICANT) v. ALLIED CHEMICAL CANADA, LTD. (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PRIVATE SECRETARY TO THE MANAGER, NURSE, PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A UNIVERSITY CO-OPERATIVE TRAINING PROGRAMME." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND THE SPECIAL CIRCUMSTANCES OF THIS CASE)

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS KNOWN TO THE PARTIES AS SEMI-TECHNICAL EMPLOYEES ARE COVERED BY THE TERM TECHNICAL EMPLOYEES AND ARE EXCLUDED FROM THE BARGAINING UNIT.

THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT PROCESS ENGINEERS, INDUSTRIAL ENGINEERS AND EMPLOYEES IN THE PLANT ENGINEERING DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

12621-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT (RESPONDENT) v. NURSES' ASSOCIATION YORK COUNTY HEALTH UNIT (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED AND GRADUATE NURSES." (29 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT REGISTERED NURSING ASSISTANTS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

THE BOARD ALSO NOTED THE AGREEMENT OF THE PARTIES THAT THE ASSISTANT CHIEF PUBLIC HEALTH INSPECTOR IS NOT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 34).

12657-66-R: CANADIAN STEEL WAREHOUSEMEN WORKERS' UNION No. 201, N.C.C.L. (APPLICANT) v. WIMCO STEEL SALES COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT ITS MARTINGROVE ROAD PLANT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TRUCK DRIVERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (43 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 35).

12669-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA U.A.W. (APPLICANT) V. CANADIAN FILTERS LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, PURCHASING AGENT, SALES REPRESENTATIVES, TIMESTUDY OBSERVERS, EQUIPMENT AND METHODS COORDINATOR, TOOL AND DIE COORDINATOR, SALARY-PERSONNEL-ACCOUNTING CLERK, ONE SECRETARY TO THE PRESIDENT, ONE SECRETARY TO THE TREASURER, AND STUDENTS EMPLOYED ON A UNIVERSITY COOPERATIVE BASIS." (42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 36).

12771-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (APPLICANT) V. TORONTO EAST GENERAL AND ORTHOPAEDIC HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, STATIONARY ENGINEERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED AFTER SCHOOL AND DURING THE SCHOOL VACATION PERIOD." (542 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT FRACTURE ROOM TECHNICIANS, OPERATING ROOM TECHNICIANS AND CASE ROOM TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.

THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT WARD CLERKS, SPECIAL DIET AND MENU CLERKS AND DIETARY CASHIER ARE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.



(SEE INDEXED ENDORSEMENT PAGE 54).

12777-66-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) v. VICKERS-SPERRY DIVISION OF SPERRY RAND CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (59 EMPLOYEES IN THE UNIT).

12790-66-R: INTERNATIONAL UNION OF DISTRICT 50 U.M.W.A. (APPLICANT) v. A.B.C. STRUCTURAL CONCRETE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE, SALES AND TECHNICAL STAFF." (39 EMPLOYEES IN THE UNIT).

12798-66-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. HARBOUR BRICK COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SAID AGREEMENT OF THE PARTIES).

12812-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. P. A. SHERWOOD WINDOWS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND SHOPMEN'S LOCAL UNION #757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, AFFILIATED WITH THE A.F.L. -C.I.O.." (42 EMPLOYEES IN THE UNIT).

12819-66-R: LOCAL UNION 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, CIO, CLC, OFL, (APPLICANT) v. THE WATER COMMISSIONERS FOR THE TOWN OF BRAMPTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

12827-66-R: CANADIAN ELECTRICAL TRADE UNION (APPLICANT) v. E. FRITZ ELECTRIC LIMITED (RESPONDENT) v. LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE NATURE OF THE RESPONDENT'S ELECTRICAL CONTRACTING OPERATIONS)

(SEE INDEXED ENDORSEMENT PAGE 60).

12828-66-R: LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. FITTER ELECTRICAL SERVICE LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT). (CERTIFIED).

THE BOARD SUBSEQUENTLY ENDORSED THE RECORD AS FOLLOWS:-

THE RESPONDENT HAS NOW POINTED OUT TO THE BOARD THAT IT OPERATES A MOTOR REPAIR SHOP IN WHICH TWO EMPLOYEES SPEND MOST OF THEIR TIME. IT WOULD APPEAR THAT THE TWO MEN IN QUESTION ARE NEVER ON CONSTRUCTION SITES. IT WAS NOT THE INTENTION OF THE BOARD TO INCLUDE THE TWO EMPLOYEES IN QUESTION IN THE BARGAINING UNIT. THE PURPOSE OF THIS DECISION IS TO MAKE THAT INTENTION CLEAR.

THE BOARD THEREFORE AMENDS PARAPHRASE 6 OF ITS DECISION OF MARCH 21, 1967 BY ADDING THERETO THE FOLLOWING:

FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT EMPLOYEES EMPLOYED IN THE MOTOR REPAIR SHOP ARE NOT EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT). (CERTIFIED).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (DISMISSED).

12835-66-R: RETAIL STORE EMPLOYEES UNION LOCAL NO. 832 (APPLICANT) V. HARLEY'S SUPERMARKET 1962 LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT MANAGER, THOSE ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (24 EMPLOYEES IN THE UNIT).

12847-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. HUMPTY-DUMPTY POTATO CHIP DIVISION OF SUNSHINE BISCUITS (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (95 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT SALES STAFF INCLUDES ROUTE SALESMEN, WHO ARE THUS EXCLUDED FROM THE BARGAINING UNIT. THE BOARD FURTHER DECLARED THAT VAN DRIVERS ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 61).

12848-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. INTERNATIONAL ASSEMBLIX LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, DRIVER SALESMEN AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

12853-66-R: NURSES' ASSOCIATION GREY COUNTY HEALTH UNIT (APPLICANT) V. BOARD OF HEALTH OF THE CORPORATION OF THE COUNTY OF GREY (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT THE SUPERVISOR PUBLIC HEALTH NURSING AND PERSONS ABOVE THE RANK OF SUPERVISOR PUBLIC HEALTH NURSING." (10 EMPLOYEES IN THE UNIT).

12854-66-R: NURSES' ASSOCIATION STORMONT, DUNDAS & GLENGARRY HEALTH UNIT (APPLICANT) V. BOARD OF HEALTH OF UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISOR OF NURSING AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSING." (12 EMPLOYEES IN THE UNIT).

12856-66-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA (APPLICANT) V. GENERAL BAKERIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CARR STREET IN TORONTO, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF, ROUTE SALESMEN, SPARE SALESMEN, DRIVERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (202 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE WAREHOUSEMEN (SHIPPERS) EMPLOYED AT THE SALES DEPOT ON MIDLAND AVENUE ARE NOT INCLUDED IN THE BARGAINING UNIT.

12857-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WM. MENARY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

12858-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CECIL SHAVER CONSTRUCTION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

12866-66-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. BAY CONCRETE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

12867-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DONALD ROPES & WIRE CLOTH LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 3325, UNITED STEELWORKERS OF AMERICA." (5 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT FOREMEN'S CLERKS ARE INCLUDED IN THE OFFICE STAFF.

12874-66-R: NURSES' ASSOCIATION YORK COUNTY HEALTH UNIT (APPLICANT) V. THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (24 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 62).

12875-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. REGAL ARC LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 64).

12878-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. GREENSPOON BROS. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA, AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 66).

12879-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. McDOUGALL-WALBRIDGE-ALDINGER (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (2 EMPLOYEES IN THE UNIT).

12884-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS CAFETERIA AT PETERBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHEF AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

12885-66-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. DOUGLAS CONCRETE PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

12893-66-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. MODERN FOOTWEAR COMPANY, A DIVISION OF JACK SCHWEBEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (29 EMPLOYEES IN THE UNIT).

12897-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. N. W. CLAYTON SHEET METAL AND HEATING Co. LTD. (RESPONDENT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 562 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 69).

12898-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, - LOCAL 905 (APPLICANT) V. THE ROBINSON CLAY PRODUCT COMPANY (OF CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

12901-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. ROLAND LEFEBVRE LATHING LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12902-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. TREND FLOORING (EASTERN) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 71).

12904-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER." (7 EMPLOYEES IN THE UNIT).

12905-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. HARDING CARPETS (COLLINGWOOD) LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT IN COLLINGWOOD, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

12912-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 141, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. AUGUST EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS." (2 EMPLOYEES IN THE UNIT).

12913-66-R: INTERNATIONAL ASSOCIATIONS OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. PRECIPITATION DIVISION JOY MANUFACTURING CO. (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS." (6 EMPLOYEES IN THE UNIT).

12916-66-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879 (APPLICANT) V. FRED UNGER & SON LTD. (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS EMPLOYED BY THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT FOREMEN PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

12917-66-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PENINSULA READY-MIX & SUPPLIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BEAMSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

12918-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ACME SPRING PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT).

12920-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879 (APPLICANT) V. WM. MENARY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS EMPLOYED BY THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT FOREMEN PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12921-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 1036 (APPLICANT) V. W. A. McDOUGALL LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF MANITOULIN EXCEPT THAT PORTION OF THE DISTRICT OF MANITOULIN WITHIN A THIRTY-FIVE MILE RADIUS OF THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

12922-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FRED UNGER & SON LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12925-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. ELECTRICAL FITTINGS, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

12932-67-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT) V. LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

12933-67-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT) V. GEM AUTO BODY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

12934-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. ONTARIO BUILDING MATERIALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

12935-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. GLAZED FINISHES LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

12936-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. COBOURG CONSTRUCTION COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN A COUNCIL OF TRADE UNIONS (WHICH INCLUDES THE APPLICANT) AND THE RESPONDENT DATED THE 23RD DAY OF DECEMBER, 1965." (2 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THAT THE AGREEMENT REFERRED TO ABOVE APPLIES TO THAT PART OF THE COUNTY OF NORTHUMBERLAND INCLUDED IN THE AREA CONTAINED IN THE ABOVE DESCRIBED BARGAINING UNIT. IT IS FOR THIS REASON THAT THE EMPLOYEES COVERED BY THE SAID COLLECTIVE AGREEMENT WERE EXCLUDED FROM THE BARGAINING UNIT.

12940-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. COBOURG CONSTRUCTION COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

12943-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BURLINGTON-NELSON HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (129 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

THE BOARD FURTHER DECLARED THAT REGISTERED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSES OF CLARITY THE BOARD FURTHER DECLARED THAT WARD CLERKS ARE MEMBERS OF THE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SWITCHBOARD OPERATORS ARE NOT INCLUDED IN THE BARGAINING UNIT, AND THAT OPERATING ROOM TECHNICIANS ARE INCLUDED IN THE BARGAINING UNIT.

12946-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 2173 (APPLICANT) v. WELCON LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF DUFFERIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

12951-67-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA. GLAZIERS LOCAL UNION 1819 (APPLICANT) v. EXCELSIOR GLASS LIMITED (RESPONDENT).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12955-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE TOWN OF ALLISTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WORKS DEPARTMENT, SAVE AND EXCEPT CHAIRMAN OF THE BOARD OF WORKS, PERSONS ABOVE THE RANK OF CHAIRMAN OF THE BOARD OF WORKS AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

12958-67-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT) v. BOSTON BROS. LIMITED (RESPONDENT) v. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT CAR SALESMEN, SERVICE SALESMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

12964-67-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 568 (APPLICANT) v. HAMILTON THERMAL SPECIALTIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

12965-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. DEERFIELD PLASTICS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEWMARKET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (32 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 77).

12966-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. DEERFIELD LAMINATIONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEWMARKET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

12967-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE METROPOLITAN TORONTO HOUSING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE KITCHEN SUPERVISOR AND PERSONS ABOVE THE RANK OF KITCHEN SUPERVISOR, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND LOCAL 43 AND LOCAL 79 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES." (12 EMPLOYEES IN THE UNIT).

12973-67-R: CANADIAN GUARDS ASSOCIATION (APPLICANT) V. CARLETON UNIVERSITY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER)

UNIT: "ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SERGEANTS AND PERSONS ABOVE THE RANK OF SERGEANT." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12975-67-R: LONDON MOULDERS AND MANUFACTURING ASSOCIATION (APPLICANT) V. RAMSDEN MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT LEAD HANDS, PERSONS ABOVE THE RANK OF LEAD HAND, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (90 EMPLOYEES IN THE UNIT).

12976-76-R: FOOD HANDLERS LOCAL UNION 175 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL CIO CLC (APPLICANT) V. POWER SUPER MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

12980-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. CLARKSON CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

12988-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SOVEREIGN HOUSEWARES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT).

12995-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. ACTO BUILDERS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13005-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. KITONAM INVESTMENT (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13006-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 837 (APPLICANT) V. S. McNALLY & SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

12882-66-R: BOOT AND SHOE WORKERS' UNION (APPLICANT) V. HILLMORE WOOD PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS  
NUMBER OF SPOILED BALLOTS

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

38

38

1

31



NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

6

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12542-66-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. SEVEN UP ONTARIO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN AND ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND ROUTE SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	15	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

12650-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 938, GENERAL TRUCK DRIVERS (APPLICANT) V. BOYES TRANSPORT LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

12750-66-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT) V. TRAVELADE MOTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT CAR SALESMEN, SERVICE SALESMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS	13	

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

12800-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, GENERAL TRUCK DRIVERS' LOCAL UNION No. 938 (APPLICANT) V. C.F. AITCHISON TRANSPORT LIMITED (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION, No. 200 NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

12813-66-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. GRINNELL COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

12822-66-R: BUILDING SERVICE EMPLOYEES UNION, LOCAL 777 (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C.) (APPLICANT) V. SUNNYBROOK HOSPITAL (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO EACH OF THE FOLLOWING: EXECUTIVE DIRECTOR, DIRECTOR OF FINANCE AND DIRECTOR OF PERSONNEL AND PUBLIC RELATIONS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (170 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	154
NUMBER OF PERSONS WHO CAST BALLOTS	117

NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	90
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	26

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

NO VOTE CONDUCTED

12454-66-R: UNITED GARMENT WORKERS OF AMERICA LOCAL #253 (APPLICANT) V. PARIS SPORTSWEAR LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (41 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 29).

12671-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 48 (APPLICANT) V. CRESTILE LIMITED (RESPONDENT). (8 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 41).

12695-66-R: COMMUNICATIONS WORKERS OF AMERICA, AFL, CIO & CLC (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC EMPLOYEE ASSOCIATION (INTERVENER). (57 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 46).

12752-66-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT) V. WHITEY'S WHITE ROSE (RESPONDENT). (12 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 52).

12815-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. FRANK LICARI, DOMINIC LACARI, ANGELO LICARI AND BENNY LICARI CARRYING ON BUSINESS IN PARTNERSHIP AS FRANK LICARI & SONS (RESPONDENT). (12 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 57).

12919-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILL-WRIGHTS' LOCAL 2309 (APPLICANT) V. CANNERS MACHINERY, LIMITED (RESPONDENT). (4 EMPLOYEES).

12945-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL 2173 (APPLICANT) V. LEN ARISS AND COMPANY LTD. (RESPONDENT). (10 EMPLOYEES).

12986-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. C. A. PITTS GENERAL CONTRACTOR LIMITED (RESPONDENT). (15 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

12537-66-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. CALDWELL LINEN MILLS LIMITED (RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, ON BEHALF OF LOCAL 14080 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT IROQUOIS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (485 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	457
NUMBER OF PERSONS WHO CAST BALLOTS	427
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	161
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	266

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12651-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 141 (APPLICANT) V. BOYES TRANSPORT LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CLINTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

12675-66-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, LOCAL 280, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. SKYLINE HOTELS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL FULL-TIME AND PART-TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS OF THE FEMALE SEX IN THE EMPLOY OF THE RESPONDENT AT ITS SKYLINE HOTEL IN METROPOLITAN TORONTO, SAVE AND EXCEPT HEAD WAITERS AND PERSONS ABOVE THE RANK OF HEAD WAITER." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	12
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5



12772-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC OFFICE EMPLOYEES ASSOCIATION (INTERVENER) V. NORTHERN ELECTRIC EMPLOYEE ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MANUFACTURING DIVISION AT BELLEVILLE, SAVE AND EXCEPT SECTION CHIEFS, PERSONS ABOVE THE RANK OF SECTION CHIEF, REGISTERED NURSES AND OFFICE STAFF." (588 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		574
NUMBER OF PERSONS WHO CAST BALLOTS		571
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT		178
NUMBER OF BALLOTS MARKED IN FAVOUR OF NORTHERN ELECTRIC EMPLOYEE ASSOCIATION		392

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

12806-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT). (10 EMPLOYEES).

12833-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. DEASCHENES STRUCTURES LIMITED (RESPONDENT). (5 EMPLOYEES).

12906-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DYSART MUNICIPAL TELEPHONE SYSTEM (RESPONDENT). (32 EMPLOYEES).

12971-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WESTERN IRON & METAL COMPANY (FORT WILLIAM) LIMITED (RESPONDENT). (3 EMPLOYEES).

12992-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PERINI LTD. (RESPONDENT). (22 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING

APRIL

12514-66-R: EMPLOYEES OF CANADIAN RADIATOR MFG. CO. LTD. (APPLICANT) V. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 183 (RESPONDENT) V. CANADIAN RADIATOR MFG. CO. LIMITED (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE INTERVENER AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	8
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	16

12766-66-R: EBERHARD MATCZYNSKI (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

UNIT: "ALL EMPLOYEES OF PITNEY-BOWES OF CANADA LIMITED AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND SERVICE STAFF, OFFICE STAFF AND PLANT GUARDS."  
(33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	31
NUMBER OF PERSONS WHO CAST BALLOTS	31
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	10
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	21

12852-66-R: THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (RESPONDENT). (DISMISSED).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE APPLICANT IN ITS BOILER ROOM AT METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER."  
(6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	4
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	0

12974-67-R: WARBRO STEEL LIMITED (APPLICANT) V. DISTRICT 50 OF THE UNITED MINE WORKERS OF AMERICA (RESPONDENT). (17 EMPLOYEES). (GRANTED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING APRIL

12605-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 172 (APPLICANT) V. CERTAIN CONTRACTOR MEMBERS OF THE WATERPROOFING CONTRACTORS ASSOCIATION (RESPONDENT) V.

OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 598 (PREDECESSOR TRADE UNION). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 80 ).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING APRIL

12956-67-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. D. SMITH ET AL (RESPONDENTS). (WITHDRAWN).

12970-67-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. A. CORMIER ET AL (RESPONDENTS). (WITHDRAWN).

12979-67-U: RIO ALGOM MINES LIMITED (PRONTO DIVISION) (APPLICANT) V. MELFORD GENE ALGER ET AL (RESPONDENTS). (WITHDRAWN).

13018-67-U: LONG SAULT YARNS LIMITED (APPLICANT) V. DEAN ALQUIRE ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

12870-66-U: RELIABLE FUR DRESSERS & DYERS LIMITED (APPLICANT) V. MR. V. AGUIAR ET AL (RESPONDENTS). (WITHDRAWN).

12871-66-U: RELIABLE FUR DRESSERS & DYERS LIMITED (APPLICANT) V. AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, LOCAL 68F, TORONTO AND M. FEDERMAN AND A. HERSHKOVITZ (RESPONDENTS). (WITHDRAWN).

12944-67-U: INTERNATIONAL MOULDERS AND ALLIED WORKERS UNION (APPLICANT) V. W. T. HAWKINS LTD. (RESPONDENT). (WITHDRAWN).

12957-67-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. D. SMITH ET AL (RESPONDENTS). (WITHDRAWN).

12969-67-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. A. CORMIER ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

APRIL

12643-66-U: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (COMPLAINANT) V. W. T. HAWKINS LTD. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 80).

12679-66-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. TONY'S INDUSTRIAL CATERING LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 81).

12697-66-U: GEORGE THOMAS (COMPLAINANT) V. COLLINGWOOD SHIPYARDS (RESPONDENT).  
(GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 85).

12816-66-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION,  
AFL, CIO, CLC (COMPLAINANT) V. SKYLINE HOTELS (CANADA) LIMITED (RESPONDENT).  
(WITHDRAWN).

12825-66-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. P. A. SHERWOOD  
WINDOWS LTD. (RESPONDENT). (WITHDRAWN).

12840-66-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES  
AND CANADA (COMPLAINANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT).  
(WITHDRAWN).

12841-66-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. R. & I RAMTITE (CANADA)  
LTD. (RESPONDENT). (WITHDRAWN).

12849-66-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (COMPLAINANT)  
V. T.G.I. STORES (SHOPPERS CITY LIMITED) (RESPONDENT). (WITHDRAWN).

12886-66-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND  
CANADA (COMPLAINANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT).  
(WITHDRAWN).

12889-66-U: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS  
(COMPLAINANT) V. DOERNER PRODUCTS COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

12892-66-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND  
CANADA (COMPLAINANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT).  
(WITHDRAWN).

12894-66-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES  
AND CANADA (COMPLAINANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT).  
(WITHDRAWN).

12900-66-U: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, AFL CIO CLC (COMPLAINANT) V. CENTRAL SUPER MARKETS  
LIMITED (RESPONDENT). WITHDRAWN).

12928-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. RUBBERMAID (CANADA) LTD.  
(RESPONDENT). (WITHDRAWN).

12938-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. TIMEX OF CANADA  
LTD. (RESPONDENT). (WITHDRAWN).



12942-67-U: INTERNATIONAL MOULDERS AND ALLIED WORKERS UNION (COMPLAINANT)  
V. W. T. HAWKINS LTD. (RESPONDENT). (WITHDRAWN).

13010-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. JETCO MANUFACTURING LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

12682-66-M: CANADIAN BUSINESS MACHINES WORKERS' UNION, AND THE NATIONAL CASH REGISTER COMPANY OF CANADA, LIMITED (JOINT APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 90).

12757-66-M: THE CANADIAN OFFICE EMPLOYEES' UNION No. 159, NCCL, AND THE NATIONAL CASH REGISTER COMPANY OF CANADA, LIMITED (JOINT APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING APRIL

12785-66-M: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. CANTEEN OF CANADA LIMITED; WALFOODS LIMITED; RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 414, AFL:CIO:CLC (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 94).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING APRIL

12715-66-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WELMET INDUSTRIES LIMITED (RESPONDENT).

12817-66-M: CANADIAN UNION OF PUBLIC EMPLOYEES, ON BEHALF OF ITS LOCAL 3 (APPLICANT) V. PUBLIC UTILITIES COMMISSION OF THE CITY OF SAULT STE. MARIE (RESPONDENT).

12821-66-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL 129 (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF PICKERING (RESPONDENT).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12554-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. POWER CONTROLS DIVISION - MIDLAND-ROSS OF CANADA LIMITED (RESPONDENT) V. THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 568 (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 99).

12671-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 48 (APPLICANT) V. CRESTILE LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 99).

12676-66-R: UNION OF NURSING ASSISTANTS (APPLICANT) V. ESSEX HEALTH ASSOCIATION (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL UNION #210 (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 100).

12897-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. N. W. CLAYTON SHEET METAL AND HEATING CO. LTD. (RESPONDENT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 562 (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 100).

#### INDEXED ENDORSEMENTS - CERTIFICATION

12242-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 18 (APPLICANT) V. SOVEREIGN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: CHARLES GUAGLIANO AND THOMAS FENWICK FOR THE APPLICANT, AND E. L. STRINGER AND JOHN GUGENBERGER FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 26, 1967.

. . .

3. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED THAT S. CUKELJ AND J. YURINICH WERE CARPENTER EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.

5. WE TURN NOW TO CONSIDER THE STATUS OF ADAM BRANDNER AND DOMINIC FALCONE, WITH RESPECT TO WHOM THE BOARD HEARD A GREAT DEAL OF EVIDENCE OVER A PERIOD OF SEVEN DAYS FOLLOWED BY ARGUMENT LASTING THE BETTER PART OF ANOTHER DAY. THE FACT THAT WE DO NOT REFER IN DETAIL TO THE EVIDENCE AND ARGUMENT IN THIS DECISION DOES NOT MEAN THAT WE HAVE NOT GIVEN CONSIDERATION TO ALL OF IT. ON THE CONTRARY, WE HAVE CAREFULLY ANALYSED AND CONSIDERED ALL OF THE EVIDENCE AND ARGUMENTS PLACED BEFORE THE BOARD AND HAVE REACHED OUR CONCLUSION ONLY AFTER MUCH ANXIOUS REFLECTION.

6. DEALING FIRSTLY WITH ADAM BRANDNER, WE NOTE THAT COUNSEL FOR THE RESPONDENT, WHOSE INITIAL SUBMISSION WAS THAT THIS EMPLOYEE WAS AN ORDINARY WORKING FOREMAN, DID NOT PRESS HIS POSITION IN ARGUMENT. WHILE NOT CONCEDING THE POINT, HE WAS CONTENT TO LET THE BOARD FORM ITS OWN CONCLUSIONS. WE ARE UNANIMOUS IN OUR CONCLUSION THAT BRANDNER EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. IN OUR VIEW THE EVIDENCE DISCLOSES THAT BRANDNER HAS FAR MORE AUTHORITY THAN THAT POSSESSED BY THE ORDINARY WORKING FOREMAN IN CHARGE OF A GANG OF CARPENTERS. TAKING INTO ACCOUNT THE DIFFERENCE BETWEEN A FORMING CONTRACTOR SUCH AS THE RESPONDENT AND A GENERAL CONTRACTOR, BRANDNER'S POSITION IS SUBSTANTIALLY SIMILAR TO THAT OF BILL AND CHARRON IN THE UNI-FORM BUILDERS LTD. CASE, NOVEMBER, 1966, BOARD FILES 11831-32-66-R. IN THAT CASE, WHICH INVOLVED A GENERAL CONTRACTOR, THE BOARD FOUND THAT BILL AND CHARRON EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE SAID SECTION 1(3)(B). IN ARRIVING AT OUR CONCLUSION IN THE PRESENT CASE, WE SHOULD PERHAPS MAKE IT CLEAR THAT WE DID NOT FIND BRANDNER'S TESTIMONY TO BE OF ANY REAL ASSISTANCE TO THE BOARD.

7. THE POSITION OF DOMINIC FALCONE IS LESS CLEAR. THERE IS NO QUESTION THAT FALCONE WAS IN CHARGE OF THE CARPENTERS AND CARPENTERS' HELPERS ON THE PROJECT. IN THIS CAPACITY HE LAID OUT THEIR WORK AND DIRECTED THEM IN IT, ASSIGNED THEM TO DIFFERENT TASKS, KEPT THEIR TIME AND IN GENERAL "KEPT AN EYE ON THEM". THERE IS NO EVIDENCE TO SUGGEST THAT HE HAD THE RIGHT TO HIRE, FIRE, LAY OFF OR TRANSFER EMPLOYEES OR TO MAKE EFFECTIVE RECOMMENDATIONS RESPECTING THESE MATTERS. THE EVIDENCE OF FALCONE AND PREZIO, THE GENERAL CONTRACTOR'S SUPERINTENDENT ON THE JOB, IS THAT FALCONE HAD TOOLS ON THE JOB AND SPENT THE MAJORITY OF HIS TIME WORKING AS DISTINCT FROM SUPERVISING. PART OF HIS WORK, OF COURSE, INCLUDED LAY-OUT, BUT IT SEEMS CLEAR THAT THE LAY-OUT WORK HE DID WAS NOT DIFFICULT AND DID NOT OCCUPY MUCH OF HIS TIME. THEIR EVIDENCE WAS, FURTHER, THAT FALCONE DID NOT SUPERVISE OTHER TRADESMEN EMPLOYED BY THE RESPONDENT ON THE JOB, THAT THESE TRADESMEN HAD THEIR OWN SUPERVISORS OR WORKING FOREMAN, THAT ONE OR OTHER OF THE TWO OWNERS OF THE RESPONDENT, AND IN PARTICULAR KARL KRAUS, SPENT A GOOD DEAL OF TIME ON THE JOB SITE EVERY DAY AND THAT FALCONE WAS NOT THE COMPANY REPRESENTATIVE ON THE JOB.

8. THE EVIDENCE OF THE WITNESSES TAYLOR AND SZTEJNER, CALLED BY THE APPLICANT IS OF NO PARTICULAR ASSISTANCE IN ATTEMPTING TO ASSESS THE STATUS OF FALCONE. TAYLOR ONLY WORKED FOR APPROXIMATELY TWO DAYS UNDER FALCONE AND SZTEJNER FOR ABOUT A WEEK SOME TWO MONTHS PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION. MOREOVER, THEIR EVIDENCE WAS ONLY THAT "FALCONE GAVE ORDERS" AND THAT FALCONE "SUPERVISED THE WORK" AND "THE EMPLOYEES OF SOV-EREIGN". THIS IS NOT INCONSISTENT WITH THE EVIDENCE PREVIOUSLY REFERRED TO CONSIDERING THAT BOTH WERE CARPENTERS. WHILE SZTEJNER STATED HE NEVER SAW FALCONE USE A HAMMER DURING THE WEEK HE WORKED UNDER HIM, THIS COULD BE ACCOUNTED FOR IN A NUMBER OF DIFFERENT WAYS IF THE EVIDENCE OF FALCONE AND PREZIO IS TO BE BELIEVED. IN OTHER WORDS THIS STATEMENT IN THE CIRCUMSTANCES IS NOT NECESSARILY INCONSISTENT WITH THE TESTIMONY OF FALCONE AND PREZIO.

9. THE ONLY EVIDENCE WHICH ON THE SURFACE DIRECTLY CONTRADICTS THAT OF FALCONE AND PREZIO IS THAT OF THE WITNESS GARY JAEHNE. ACCORDING TO JAEHNE, FALCONE WAS "SUPERVISING THE JOB"; HE WOULD "TELL THE OTHER CARPENTERS WHAT TO LAY OUT AND WHAT TO DO" AND "ON DECK I WENT TO FALCONE FOR MEASUREMENTS".

JAEHNE ALSO TESTIFIED THAT FALCONE DID NOT WORK LIKE A REGULAR CARPENTER FOR 4 OR 8 HOURS, THAT HE USED A HAMMER ONLY OCCASIONALLY, THAT FALCONE DID NOT HAVE A PERSONAL KIT OF TOOLS ON THE JOB AND THAT, IN GENERAL, HE WAS LOOKING AFTER THE JOB. THE CHIEF POINTS OF CONFLICT IN THIS EVIDENCE ARE THE CLAIMS THAT FALCONE DID NOT HAVE TOOLS ON THE JOB, DID NOT DO MUCH CARPENTRY WORK AND SPENT MOST OF HIS TIME SUPERVISING THE JOB. THERE IS NO INCONSISTENCY IN THE STATEMENTS THAT HE DID LAY-OUT WORK, WOULD TELL THE OTHER CARPENTERS WHAT TO DO AND GAVE OUT MEASUREMENTS. ALL WITNESSES AGREE ON THIS. FURTHER, THERE IS NO SUGGESTION IN JAEHNE'S TESTIMONY THAT FALCONE GAVE ORDERS TO OTHER TRADESMEN ON THE JOB, FOR EXAMPLE, THE RODMEN OR CEMENT FINISHERS OR THE LABOURERS ENGAGED ON A POUR.

10. IN ASSESSING THIS EVIDENCE IT IS IMPORTANT TO NOTE THAT JAEHNE WAS SENT TO THE PROJECT TO WORK ON THE GARAGE WHICH WAS SEPARATED FROM THE BUILDING ON WHICH FALCONE WAS EMPLOYED. FALCONE HAD NOTHING TO DO WITH THE GARAGE AND WHILE JAEHNE WAS WORKING THERE HE WOULD HAVE NO OPPORTUNITY TO OBSERVE WHAT WENT ON AT THE MAIN BUILDING. HOWEVER, JAEHNE DID SOME WORK UNDER FALCONE'S SUPERVISION AT THIS OTHER BUILDING, ALTHOUGH THERE IS NOTHING IN JAEHNE'S EVIDENCE TO INDICATE HOW LONG HE WAS THERE. ON THIS QUESTION PREZIO TESTIFIED THAT JAEHNE WAS ON THE GARAGE MOST OF THE TIME AND THAT HE SAW HIM WORKING ON THE MAIN BUILDING "MAYBE THREE TIMES". KARL KRAUS' EVIDENCE IS THAT JAEHNE HAD A SEPARATE GANG ON THE GARAGE AND THAT HE WAS "MAYBE ONLY THREE DAYS UP" - THAT IS, ON THE MAIN BUILDING. FALCONE'S DUTIES AND RESPONSIBILITIES WERE EXAMINED OVER A PERIOD OF SOME FOUR MONTHS AND, AS IN THE CASE OF TAYLOR AND SZTEJNER, JAEHNE'S EVIDENCE MUST BE VIEWED IN THIS SETTING.

11. WE WERE IMPRESSED WITH FALCONE AS A WITNESS. IN OUR JUDGMENT HIS EVIDENCE WAS GIVEN IN A STRAIGHTFORWARD MANNER AND HE WAS NOT SHAKEN IN CROSS-EXAMINATION. WHILE PREZIO, AN INDEPENDENT WITNESS IN THE SENSE THAT HE WAS AN EMPLOYEE OF A THIRD PARTY, WAS PERHAPS INCLINED TO EXAGGERATE AT TIMES, IN THE MAIN HIS EVIDENCE CORROBORATES THAT OF FALCONE'S AND WE ACCEPT IT AS SUCH.

12. IN THE RESULT, WE FIND THAT FALCONE WAS IN CHARGE OF THE CARPENTERS AND CARPENTERS' HELPERS AND AS SUCH DIRECTED AND SUPERVISED THEM IN THEIR WORK, ASSIGNED THEM TO DIFFERENT TASKS, GAVE THEM MEASUREMENTS AS REQUIRED, AND KEPT THEIR TIME. HE WORKED FOR A SUBSTANTIAL PART OF HIS TIME - ABOUT 60% - AS A CARPENTER USING THE TOOLS REQUIRED ON THE TYPE OF WORK, FORMING, IN WHICH THE RESPONDENT WAS ENGAGED. THIS WORK INCLUDED LAY-OUT WORK WHICH WAS OF A RELATIVELY SIMPLE NATURE. HE DID NOT SUPERVISE THE OTHER TRADES IN THE EMPLOY OF THE RESPONDENT ON THE PROJECT. FALCONE HAD NO POWER TO HIRE, FIRE, LAY OFF OR TRANSFER EMPLOYEES OR TO MAKE EFFECTIVE RECOMMENDATIONS ON SUCH MATTERS. HE COULD NOT ORDER OVERTIME WORK FOR THE CARPENTERS ON HIS OWN INITIATIVE. HE WAS NEVER ASKED TO RECOMMEND WAGE INCREASES. WHILE HE COULD LET A MAN GO HOME EARLY, HE COULD NOT ON HIS OWN ALLOW A MAN A DAY OR TWO OFF. THE OWNERS OF THE RESPONDENT, AND PARTICULARLY KARL KRAUS, SPENT A GREAT DEAL OF TIME EACH DAY AT THE SITE, AND IF ONE WAS AWAY THE OTHER TOOK HIS PLACE. ALTHOUGH PREZIO, THE SUPERINTENDENT FOR THE GENERAL CONTRACTOR, DEALT WITH FALCONE ON MATTERS RELATING TO CARPENTRY, HE DEALT WITH THE OWNERS ON GENERAL PROBLEMS AND WITH THOSE IN CHARGE OF THE OTHER TRADES ON MATTERS RELATING TO THEIR TRADES. IN OTHER WORDS, ALTHOUGH FALCONE WAS IN CHARGE OF A CONSIDERABLE NUMBER OF MEN, 6 CARPENTERS AND FROM 10 TO 12 LABOURERS WHEN WORKING AS CARPENTERS' HELPERS, HE WAS NOT IN CHARGE OF THE PROJECT AS A WHOLE FOR THE RESPONDENT.



13. A WORKING FOREMAN IN THE CONSTRUCTION INDUSTRY IS BOUND TO EXERCISE SOME AUTHORITY OVER MEN WORKING UNDER HIS DIRECTION. NORMALLY THE EXTENT OF THAT AUTHORITY IS NOT SUFFICIENT TO CONSTITUTE THE EXERCISE OF MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. IN THE PRESENT CASE IT IS CLEAR THAT FALCONE'S AUTHORITY DIFFERS CONSIDERABLY FROM THAT OF BRANDNER OR OF WILHELM IN THE PRE-CON MURRAY LIMITED CASE, O.L. R.B. MONTHLY REPORT, AUGUST 1965, P. 328, OR BILL AND CHARRON IN UNI-FORM BUILDERS LTD. (SUPRA). IN OUR JUDGMENT, FALCONE'S AUTHORITY IS NOT SUCH THAT, TAKING INTO ACCOUNT NORMAL COLLECTIVE BARGAINING PRACTICES IN THE CONSTRUCTION INDUSTRY, HE CAN BE SAID TO EXERCISE MANAGERIAL FUNCTIONS.

14. FOR PURPOSES OF CLARITY, THEREFORE, THE BOARD DECLARES FURTHER THAT ADAM BRANDNER IS NOT AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT, WHILE DOMINIC FALCONE IS SO INCLUDED.

15. ON THE BASIS OF THE ABOVE FINDINGS, THE BOARD FINDS FURTHER THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE 13 EMPLOYEES IN THE BARGAINING UNIT. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

16. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

17. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

18. THE MATTER IS REFERRED TO THE REGISTRAR.

12319-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA (APPLICANT) v. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: APRIL 26, 1967.

1. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MARCH 20TH, 1967, IN THIS MATTER, THE APPLICANT ALLEGED THAT THE EXAMINATION OF MRS. DI SIMONE WAS CONTRADICTORY AND THAT THERE WAS AN ISSUE OF CREDIBILITY WHEN HER EVIDENCE IS COMPARED TO THE EVIDENCE OF A WITNESS CALLED BY THE APPLICANT.

THE APPLICANT, RELYING ON THE PRINCIPLES SET OUT IN THE BARLIN-SCOTT CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 595, REQUESTED THE BOARD TO REQUIRE THAT MRS. DI SIMONE TESTIFY BEFORE THE BOARD CONCERNING HER DUTIES AND RESPONSIBILITIES, OR IN THE ALTERNATIVE, THE BOARD WAS REQUESTED TO FIND THAT SHE EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AS AMENDED BY THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED MARCH 31ST, 1967, THE BOARD IS OF OPINION THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT THERE IS ANY MATERIAL DISCREPANCIES IN THE EVIDENCE OF MRS. DI SIMONE OR THAT THE EVIDENCE OF THE WITNESS CALLED BY THE APPLICANT CONCERNING MRS. DI SIMONE'S DUTIES AND RESPONSIBILITIES WAS CONTRADICTORY TO THE TESTIMONY OF MRS. DI SIMONE IN ANY MATERIAL RESPECT. THE BOARD IS THEREFORE OF OPINION THAT THE APPLICANT HAS FAILED TO CLEARLY DEMONSTRATE THAT THERE IS, IN FACT, A QUESTION OF CREDIBILITY WHICH RELATES TO A MATTER OF SUBSTANTIAL MATERIALITY TO THE BOARD'S CONSIDERATION OF THE ISSUE BEFORE IT, AND THE APPLICANT'S REQUEST THAT THE BOARD HEAR THE TESTIMONY OF MRS. DI SIMONE IS ACCORDINGLY DENIED.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MARCH 20TH, 1967, AS AMENDED BY A SUPPLEMENTARY REPORT OF THE EXAMINER DATED MARCH 31ST, 1967, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO AS CONTAINED IN THE LETTERS FROM THE APPLICANT DATED MARCH 27TH, 1967 AND APRIL 6TH, 1967, AND THE LETTERS FROM THE RESPONDENT DATED MARCH 30TH, 1967, APRIL 3RD, 1967, APRIL 10TH, 1967 AND APRIL 14TH, 1967, AND HAVING REGARD TO THE DECISION OF THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, THE BOARD FINDS THAT WHILE SOME OF THE PERSONS IN QUESTION HAVE CERTAIN INCIDENTAL SUPERVISORY FUNCTIONS, THE MAJORITY OF THEIR TIME IS SPENT PERFORMING WORK WITH OTHER EMPLOYEES IN THE BARGAINING UNIT. IN ADDITION, THE BOARD HAS BEEN UNABLE TO FIND THAT ANY OF THE PERSONS WITH WHOM WE ARE HERE CONCERNED HAVE ANY REAL DISCRETIONARY POWERS BUT MERELY HAVE AUTHORITY TO MAKE RECOMMENDATIONS. THE BOARD THEREFORE FINDS THAT J. LACIVITA, DAVID PERELMUTER, R. GERALDI, MATTIA FENYO, GIUSEPPINA SPATOLA AND LUGINA DI SIMONE DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT A. SERPA AND M. CASALE ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: APRIL 26, 1967.

I DISSENT FROM THE MAJORITY DECISION AS IT RELATES TO MRS. DI SIMONE. IN LIGHT OF THE CIRCUMSTANCES SURROUNDING HER TESTIMONY AND THE ALLEGATION BY THE APPLICANT WITH REGARD TO THE QUESTION OF CREDIBILITY, I WOULD HAVE CALLED MRS. DI SIMONE TO TESTIFY BEFORE THE BOARD CONCERNING HER DUTIES AND RESPONSIBILITIES.

12454-66-R: UNITED GARMENT WORKERS OF AMERICA LOCAL #253 (APPLICANT) V. PARIS SPORTSWEAR LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: T. E. ARMSTRONG FOR THE APPLICANT, W. S. COOK AND J. SEGAL FOR THE RESPONDENT AND SAM GREENBAUM FOR A GROUP OF EMPLOYEES.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON: APRIL 19, 1967.

1. ON JANUARY 9TH, 1967, THE APPLICANT TRADE UNION WAS CERTIFIED AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED IN PARAGRAPH 2 OF THE BOARD'S ENDORSEMENT OF THE RECORD OF THE SAME DATE. ON JANUARY 30TH, 1967, THE RESPONDENT MADE CERTAIN ALLEGATIONS AS TO NONPAYMENT OF INITIATION FEES WITH RESPECT TO CERTAIN PERSONS WHO HAD BEEN CLAIMED AS MEMBERS BY THE APPLICANT. AFTER CARRYING OUT ITS USUAL INVESTIGATION, THE BOARD LISTED THE MATTER FOR HEARING FOR THE PURPOSE OF INQUIRY INTO THE CIRCUMSTANCES RELATING TO THE ALLEGED PAYMENT OF INITIATION FEE BY CHARIKLIA SPANTIDAKI.

2. THE BOARD HEARD THE VIVA VOCE TESTIMONY OF MISS SPANTIDAKI, WHO DENIED HAVING PAID ANY MONEY WITH RESPECT TO MEMBERSHIP IN THE APPLICANT, AND OF XENIA KARTAKIS AND MORITZ SUSSHOLZ, EACH OF WHOM TESTIFIED THAT MISS SPANTIDAKI DID IN FACT PAY \$1.00 INITIATION FEE.

3. MISS SPANTIDAKI TESTIFIED THAT, AT NOON ONE DAY DURING THE APPLICANT'S ORGANIZING CAMPAIGN, MRS. KARTAKIS ASKED HER TO SIGN AN APPLICATION CARD FOR MEMBERSHIP IN THE APPLICANT. MISS SPANTIDAKI DID SIGN THE CARD. THEN MISS SPANTIDAKI INQUIRED WHETHER IT WAS NECESSARY FOR HER TO PAY \$1.00 IN RESPECT OF THE APPLICATION, INDICATING THAT SHE DID NOT WISH TO PAY IT, SINCE SHE HAD ALREADY PAID \$1.00 TO ANOTHER UNION WITH RESPECT TO AN APPLICATION CARD SHE HAD SIGNED FOR IT. SHE TESTIFIED THAT SHE SIGNED APPLICATIONS FOR TWO UNIONS, SINCE SHE DID NOT KNOW WHICH WAS BETTER, AND WANTED TO AVOID TROUBLE. SHE DID NOT WISH, HOWEVER, TO MAKE TWO PAYMENTS OF \$1.00. ACCORDING TO MISS SPANTIDAKI, MRS. KARTAKIS TOLD HER THAT SHE WOULD HAVE TO PAY THE DOLLAR, AND MISS SPANTIDAKI DID NOT PAY IT AND NOTHING FURTHER WAS SAID.

4. THE TESTIMONY OF MRS. KARTAKIS AND MR. SUSSHOLZ WAS VERY DIFFERENT WITH THAT OF MISS SPANTIDAKI. MRS. KARTAKIS TESTIFIED THAT, FOLLOWING WORK ON NOVEMBER 16TH (WHICH IS THE DATE APPEARING ON THE APPLICATION CARD AND RECEIPT SUBMITTED WITH RESPECT TO MISS SPANTIDAKI'S APPLICATION) AND ON LEAVING THE FACTORY SHE CHECKED OVER MISS SPANTIDAKI'S MEMBERSHIP CARD, ALTHOUGH SHE STATED THAT SHE WAS NOT THE ONE WHO HAD GIVEN THAT CARD TO MISS SPANTIDAKI. MRS. KARTAKIS THEN SHOWED THE CARD TO MR. SUSSHOLZ, WHOM THEY MET ON THE SIDEWALK OUTSIDE THE FACTORY. MISS SPANTIDAKI HAD ASKED MRS. KARTAKIS WHETHER SHE HAD TO PAY \$1.00, AND MRS. KARTAKIS, HAVING CONSULTED WITH MR. SUSSHOLZ, TOLD HER THAT SHE DID. MISS SPANTIDAKI, WHOSE NATIVE LANGUAGE IS GREEK, DOES NOT SPEAK ENGLISH, ALTHOUGH MRS. KARTAKIS DOES. MRS. KARTAKIS TESTIFIED THAT SHE THEN SAW MISS SPANTIDAKI PAY \$1.00 TO MR. SUSSHOLZ. MRS. KARTAKIS TESTIFIED THAT THESE EVENTS TOOK PLACE AT ABOUT THE TIME THAT MISS SPANTIDAKI SIGNED THE APPLICATION CARD, AND THAT MR. SUSSHOLZ THEN WROTE OUT A RECEIPT.

5. MR. SUSSHOLZ'S TESTIMONY CORROBORATED THAT OF MRS. KARTAKIS, ALTHOUGH THERE IS NO MENTION IN MR. SUSSHOLZ'S EVIDENCE OF THE ACTUAL SIGNING OF THE CARD BY MISS SPANTIDAKI.

6. ON BEING RECALLED, MISS SPANTIDAKI CONFIRMED HER EARLIER TESTIMONY, AND IN PARTICULAR DENIED THAT THERE WAS ANY DISCUSSION ON THE SIDEWALK OUTSIDE THE FACTORY, OR THAT SHE HAD EVER SEEN MR. SUSSHOLZ.

7. ALTHOUGH ALL OF THE WITNESSES WERE SUBJECTED TO CROSS-EXAMINATION BY EXPERIENCED COUNSEL, NONE WAS SHAKEN IN HIS TESTIMONY. MISS SPANTIDAKI EXHIBITED SOME CONFUSION IN HER EVIDENCE RELATING TO AN INTERVIEW WITH MR. COOK, COUNSEL FOR THE RESPONDENT, AND TO THE MANNER IN WHICH THIS MATTER CAME TO THE RESPONDENT'S ATTENTION. THE EVIDENCE OF MRS. KARTAKIS IS CONFUSING AS TO THE TIME WHEN MISS SPANTIDAKI SIGNED THE APPLICATION CARD. BEING EXAMINED BY THE BOARD, MRS. KARTAKIS STATED THAT SHE SAW MISS SPANTIDAKI'S CARD AFTER WORK AND CHECKED IT OVER AT THAT TIME. LATER, BEING EXAMINED BY MR. ARMSTRONG, COUNSEL FOR THE APPLICANT, OVER THE DIFFERENCES IN TIMES THAT THE TWO LADIES CLOCKED OUT FROM WORK, MRS. KARTAKIS STATED THAT SHE HAD PROMISED MISS SPANTIDAKI TO ASK MR. SUSSHOLZ ABOUT THE DOLLAR PAYMENT. ON THE BASIS OF HER OTHER TESTIMONY, THERE WOULD BE NO REASON FOR MRS. KARTAKIS MAKING SUCH A PROMISE AT ANY TIME BEFORE SHE LEFT THE FACTORY.

8. THERE WERE INTRODUCED INTO EVIDENCE THE TWO LADIES' TIME CARDS FOR THE PERIOD IN QUESTION, WHICH SHOW THAT MRS. KARTAKIS CLOCKED OUT AT 6:03 P.M. AND MISS SPANTIDAKI AT 6:35 P.M. THE EVIDENCE IS THAT IT WAS USUAL FOR MRS. KARTAKIS TO LEAVE ABOUT HALF AN HOUR BEFORE MISS SPANTIDAKI. IN EXPLANATION



OF THIS, MRS. KARTAKIS SUGGESTED THAT SHE ACCOMPANIED MISS SPANTIDAKI WHEN THE LATTER LEFT THE FACTORY, AND THAT, AFTER THE CONVERSATION ABOVE DESCRIBED, MRS. KARTAKIS RETURNED TO THE FACTORY TO DO SOME OF HER OWN WORK. SINCE IT DOES NOT APPEAR FROM THE EVIDENCE THAT MRS. KARTAKIS WAS IN FACT ENGAGED ON HER OWN WORK BEFORE 6:35, AND SINCE THERE IS NO SUGGESTION THAT SHE WAITED APPROXIMATELY HALF AN HOUR FOR MISS SPANTIDAKI TO LEAVE, MRS. KARTAKIS' EXPLANATION OF THIS MATTER IS UNSATISFACTORY.

9. IT MAY FURTHER BE NOTED (ALTHOUGH WE DRAW NO INFERENCE OF FACT FROM THIS) THAT THE RECEIPTS FILED AS EVIDENCE BY THE APPLICANT DID NOT BEAR COUNTER-SIGNATURES OF THE PERSONS ALLEGED TO HAVE MADE THE PAYMENTS. WE WOULD OBSERVE THAT, HAD THE APPLICANT FOLLOWED THE USUAL PRACTICE OF OBTAINING COUNTER-SIGNATURES OF PERSONS WHO HAVE MADE PAYMENTS ON ACCOUNT OF MEMBERSHIP APPLICATION, AND HAD MISS SPANTIDAKI COUNTER-SIGNED THE RECEIPT IN THE INSTANT CASE, THERE WOULD HAVE BEEN AN ONUS ON HER TO EXPLAIN THE PRESENCE OF HER SIGNATURE ON THE RECEIPT.

10. CONSIDERING ALL OF THE EVIDENCE BEFORE US, AND ON THE BALANCE OF PROBABILITIES, THE BOARD FINDS THAT CHARIKLIA SPANTIDAKI, A PERSON FOR WHOM EVIDENCE OF MEMBERSHIP WAS SUBMITTED BY THE APPLICANT, DID NOT PAY \$1.00 IN ACCORDANCE WITH THE BOARD'S REQUIREMENTS RELATING TO MEMBERSHIP EVIDENCE. IN THE INSTANT CASE, MR. SUSSHOLZ, BUSINESS AGENT OF THE APPLICANT, ACTED AS COLLECTOR IN THE SUBSTANTIAL MAJORITY OF CASES, AND FORM 8 WAS FILED WITH THE BOARD OVER HIS SIGNATURE. IN THESE CIRCUMSTANCES, WE ARE LED TO CONCLUDE THAT IN THE LIGHT OF OUR FINDING AS TO THE NONPAYMENT BY MISS SPANTIDAKI, THE APPLICANT WAS NOT ENTITLED TO CERTIFICATION AND THAT THE APPLICATION SHOULD HAVE BEEN DISMISSED. THIS CONCLUSION IS CONSISTENT WITH THOSE REACHED BY THE BOARD IN OTHER CASES IN WHICH A SIMILAR ISSUE HAS ARISEN. REFERENCE MAY BE MADE, INTER ALIA, TO THE WEBSTER AIR EQUIPMENT CASE, (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,110, THE R.C.A. VICTOR CASE, (1953) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17,067, AND THE DOMINION STORES CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 447.

11. THE BOARD'S CERTIFICATE DATED JANUARY 9TH, 1967, ISSUED TO THE APPLICANT IS HEREBY REVOKED.

12. THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFE: APRIL 19, 1967.

I DISSENT FROM THE DECISION OF THE MAJORITY.

AS I SEE THIS MATTER, THE MAJORITY HAVE MADE THEIR DECISION ON THE BASIS THAT THE BALANCE OF PROBABILITIES GIVE WEIGHT TO THE STORY TOLD BY MISS SPANTIDAKI AND ON THE SAME BASIS DESTROYS THE DIRECT EVIDENCE OF MR. SUSSHOLZ THAT HE RECEIVED A DOLLAR PAYMENT FROM SPANTIDAKI. THIS EVIDENCE WAS CORROBORATED BY MRS. KARTAKIS TO THE EFFECT THAT SHE SAW MISS SPANTIDAKI PAY THE DOLLAR TO SUSSHOLZ.

BASED ON THE EVIDENCE BEFORE US THERE COULD ONLY BE THE MATTER OF THE EVIDENCE OF THE TIME CARD THAT COULD SWAY THE MAJORITY TO GIVE CREDENCE TO THE TESTIMONY OF MISS SPANTIDAKI. THIS EVIDENCE WAS TO THE EFFECT THAT MRS.

KARTAKIS CLOCKED OUT AT 6:03 P.M. AND MISS SPANTIDAKI AT 6:35 P.M. BECAUSE OF THE DIFFERENCE OF 32 MINUTES BETWEEN THE CLOCKING OUT OF THESE WITNESSES WE ARE ASKED TO BELIEVE THAT IT IS NOT PROBABLE THAT A MEETING TOOK PLACE BETWEEN SUSSHOLZ, KARTAKIS AND SPANTIDAKI OUTSIDE THE PLANT IMMEDIATELY AFTER WORK ON THE DAY INVOLVED.

MRS. KARTAKIS GAVE EVIDENCE TO THE EFFECT THAT ON THE DAY IN QUESTION SHE CLOCKED OUT AT 6:03 P.M. AND THEN RETURNED TO HER WORK STATION TO DO SOME WORK ON A COAT SHE WAS MAKING FOR HER DAUGHTER. SHE CONTINUED TO WORK ON THE COAT UNTIL SHE LEFT THE PLANT IN THE COMPANY OF MISS SPANTIDAKI.

IN THIS CASE THERE IS A COMPLETE CONFLICT OF TESTIMONY BETWEEN MISS SPANTIDAKI ON THE ONE HAND AND THE EVIDENCE OF Mr. SUSSHOLZ AND Mrs. KARTAKIS ON THE OTHER HAND.

IN THIS SITUATION, MATTERS OF CREDIBILITY OR RELIABILITY OF WITNESSES MUST BE TAKEN INTO ACCOUNT TO ARRIVE AT A JUST DECISION.

Mr. SUSSHOLZ'S TESTIMONY WAS STRAIGHTFORWARD, CLEAR AND GIVEN IN A VERY POSITIVE MANNER. UNDER CROSS-EXAMINATION HIS TESTIMONY WAS UNSHAKEN.

MRS. KARTAKIS WAS ALSO POSITIVE AND DIRECT IN HER TESTIMONY WITH REGARD TO THE PAYMENT OF THE DOLLAR BY MISS SPANTIDAKI. SHE APPEARED TO BE A LITTLE CONFUSED ON THE MATTER OF THE SIGNING OF THE CARD, HOWEVER, THIS MATTER WAS NOT IN DISPUTE BECAUSE THERE WAS AGREEMENT BY MISS SPANTIDAKI THAT SHE HAD SIGNED THE MEMBERSHIP CARD.

ON THE OTHER HAND, MISS SPANTIDAKI WAS BY ALL FAIR MEASUREMENT A MOST UNRELIABLE WITNESS. SHE HEDGED ON THE MATTER OF HOW SHE HAD BROUGHT THIS CHARGE TO THE ATTENTION OF HER BOSS, Mr. SEGAL. SHE ATTEMPTED TO DENY THAT SHE HAD EVER DISCUSSED THIS CHARGE WITH HIM, AND IT WAS ONLY UNDER FURTHER PROBING CROSS-EXAMINATION THAT SHE ADMITTED THAT SHE HAD MADE ARRANGEMENTS TO ATTEND THE HEARING WITH HIM AND THAT IN FACT HE HAD ESCORTED HER TO THE HEARING. UNDER EXAMINATION BY THE RESPONDENT'S COUNSEL, Mr. COOK, SHE COULD NOT RECALL HAVING MET HIM (COOK) AND COULD NOT IDENTIFY HIM AS HER INTERVIEWER WITH REGARD TO THESE CHARGES AT A MEETING ON THE COMPANY'S PREMISES THE WEEK BEFORE THE HEARING.

WE ARE ASKED TO WEIGH IN THE BALANCE THE EVIDENCE OF THESE THREE WITNESSES AND ACCEPT FROM MISS SPANTIDAKI TESTIMONY RELATING TO A MINOR INCIDENT IN NOVEMBER, 1966, (THE PAYMENT OF ONE DOLLAR BY HER) WHEN SHE CANNOT RECALL THE LEADING FIGURE IN A MOST IMPORTANT INTERVIEW ON THE COMPANY'S PREMISES OF THE WEEK PRIOR TO THE HEARING. WE ARE ASKED TO ACCEPT THIS WITNESS' EVIDENCE TO DESTROY THE DIRECT TESTIMONY OF TWO OTHER WITNESSES RELATING TO VERY SERIOUS CHARGES.

IN THE LIGHT OF THE FOREGOING EVIDENCE, TO TURN TO THE FURTHER TEST OF BALANCE OF PROBABILITIES IS STRETCHING THE CUSTOMARY TEST OF PROBABILITIES TO RIDICULOUS LENGTHS. WHERE THERE APPEARS TO BE CONFLICT BETWEEN RELIABLE AND STRAIGHTFORWARD PARTIES, THEN I CAN SEE HOW A JUDICIAL BODY WOULD TURN TO THE TEST OF BALANCE OF PROBABILITIES, BUT IN THE INSTANT CASE THE EVIDENCE OF MISS SPANTIDAKI IS TO PUT IT AT THE MOST FAVOURABLE JUDGEMENT, COMPLETELY CONFUSED.

THE CHARGES IN THE INSTANT CASE, WHICH WERE BROUGHT TO THE BOARD'S ATTENTION BY THE RESPONDENT COMPANY, ARE SERIOUS AND GRAVE. THEY AMOUNT TO A CONSPIRACY BY THE WITNESSES, SUSSHOLZ AND KARTAKIS, TO PERPETRATE A FRAUD ON THE BOARD. I WANT TO MAKE IT ABUNDANTLY CLEAR THAT I DO NOT FOR ONE MOMENT CONDONE FRAUD OF ANY KIND. IF I WERE CONVINCED THAT THE APPLICANT IN THIS CASE WAS INVOLVED IN A SCHEME TO MISLEAD THE BOARD, I WOULD NOT HESITATE TO RECORD MY DISAPPROVAL IN THE STRONGEST TERMS POSSIBLE.

BECAUSE OF THE SERIOUS NATURE OF THE CHARGES AND THE REFLECTION SUCH CHARGES CAST ON THE CHARACTER AND INTEGRITY OF THE TWO WITNESSES FOR THE APPLICANT, I BELIEVE THAT THIS BOARD MUST PRESUME THEIR INNOCENCE UNTIL AND UNLESS SUCH SERIOUS CHARGES ARE FOUND TO HAVE SOME FOUNDATION IN FACT. TO PUNITIVELY REVOKE THE APPLICANT UNION'S PREVIOUS CERTIFICATION AND IN THE PROCESS LEAVE A STIGMA ON THE CHARACTER OF THE WITNESSES INVOLVED, PARTICULARLY MR. SUSSHOLZ, WHO IS A RESPONSIBLE OFFICIAL OF THE UNION, IS EXTREMELY HARSH IN LIGHT OF THE VERY UNSATISFACTORY EVIDENCE OF ONLY ONE WITNESS, MISS SPANTIDAKI.

THE DECISION OF MY COLLEAGUES IN THIS CASE WILL MAKE IT ALMOST IMPOSSIBLE FOR RESPONSIBLE UNION ORGANIZERS TO PROTECT THEIR HONESTY AND INTEGRITY. IN LIGHT OF THIS "CONVICTION", ON THE FLIMSY EVIDENCE OF MISS SPANTIDAKI, ONE CAN ONLY WONDER HOW MANY WITNESSES A UNION ORGANIZER WILL NEED IN THE FUTURE TO ESTABLISH THAT HE DID INDEED SIGN UP A PARTICULAR EMPLOYEE AND RECEIVED A DOLLAR PAYMENT.

IN THE INSTANT CASE THE RESPONDENT COMPANY, THREE WEEKS AFTER THE UNION WAS CERTIFIED, BROUGHT FORWARD CERTAIN ALLEGATIONS AGAINST THE UNION. OF THE PERSONS NAMED BY THE RESPONDENT WHO ARE ALLEGED TO BE INVOLVED IN THE NON-PAYMENT OF UNION DUES, ONLY ONE IS FOUND BY THE BOARD'S EXAMINER TO HAVE ANY BASIS TO IT. THIS OF COURSE IS THE ALLEGATION OF MISS SPANTIDAKI. ONE IS ONLY LEFT TO WONDER WHERE RESPONSIBILITY LIES IN THIS KIND OF CHARGE AGAINST A UNION. SURELY A RESPONDENT COMPANY MUST ACCEPT RESPONSIBILITY WHEN CERTAIN OF THEIR SERIOUS ALLEGATIONS ARE FOUND TO HAVE NO FOUNDATION WHATEVER, AND OF THE ONE INSTANT ALLEGATION THAT AT FIRST GLANCE APPEARS TO HAVE AN ANSWERABLE CASE. SURELY THE CARRIAGE OF SUCH CASE MUST REST WITH THE ACCUSER. SURELY A HEAVY ONUS MUST REST WITH THE ACCUSER TO ESTABLISH AT LEAST A REASONABLE CASE THAT HIS SERIOUS CHARGES WILL STICK.

THE ACCUSER IN THIS INSTANCE, THE RESPONDENT COMPANY, FAR FROM ESTABLISHING HIS SERIOUS CHARGES COULD NOT EVEN TIE DOWN ITS PRINCIPLE WITNESS, MISS SPANTIDAKI, TO THE DETAILS AND CONVERSATION OF A MEETING THEY HELD WITH HER A WEEK PRIOR TO THE HEARING. THE WITNESS, THAT THE MAJORITY ARE RELYING ON TO MAKE THEIR DECISION COULD NOT EVEN RECALL MEETING WITH MR. COOK THE WEEK PREVIOUSLY. I WOULD HAVE TO APPLY THE NORMAL CONCEPT OF BRITISH JUSTICE TO THIS CASE TO THE EFFECT THAT THE ACCUSED WERE INNOCENT UNTIL PROVEN GUILTY. I BELIEVE IT IS BAD LAW TO PRESUME THE ACCUSED GUILTY UNLESS THEY ESTABLISH THEIR INNOCENCE BY OVERWHELMING EVIDENCE.

THE ONUS OF PRESENTING A REASONABLE FOUNDATION FOR THESE SERIOUS CHARGES RESTED WITH THE ACCUSERS. THEY DID NOT IN MY OPINION MEET EVEN BASIC OBLIGATIONS IN THIS REGARD. I COULD NOT, IN THE ABSENCE OF EVEN A REASONABLE CASE, TURN TO THE QUESTION OF BALANCE OF PROBABILITIES AND I THEREFORE WOULD HAVE NO HESITATION IN DISMISSING THE CHARGES BROUGHT AGAINST THE APPLICANT UNION.

IN ANY EVENT, THE DECISION OF THE MAJORITY TO REVOKE THE CERTIFICATION OF THE APPLICANT ON THE BALANCE OF PROBABILITIES IS AN ENTIRELY NEW DEPARTURE FOR THE BOARD IN CASES OF THIS KIND.

THIS PUNITIVE ACTION IN THE CIRCUMSTANCES OF THIS CASE IS PARTICULARLY HARSH AND IN MY RESPECTFUL OPINION IS NOT IN KEEPING WITH THE CUSTOMARY WELL RESPECTED AND LEARNED DECISIONS OF THE BOARD.

12621-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT (RESPONDENT) v. NURSES' ASSOCIATION YORK COUNTY HEALTH UNIT (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: F. L. TAYLOR AND C. F. KITCHEN FOR THE APPLICANT, W. S. COOK, S. T. RUMBLE AND DR. B. C. LE PAGE FOR THE RESPONDENT, D. F. O. HERSEY, MISS L. JOHNSON AND L. SHARP FOR THE INTERVENER, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: APRIL 28, 1967.

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2. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED FEBRUARY 22ND, 1967, IN THIS MATTER, THE RESPONDENT REQUESTED A HEARING TO MAKE REPRESENTATIONS AS TO WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, AND THE REASONS FOR DECISION OF THE BOARD IN THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT CASE, BOARD FILE NO. 12874-66-R, DATED APRIL 28TH, 1967, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED AND GRADUATE NURSES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT REGISTERED NURSING ASSISTANTS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT JEAN ELINES IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT, AND THAT JOHN A. PARK DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT WILLIAM H. BURNS A PERSON CLASSIFIED BY THE RESPONDENT AS CHIEF PUBLIC HEALTH INSPECTOR, AND JESSE E. COX A PERSON CLASSIFIED BY THE RESPONDENT AS CHIEF PLUMBING



INSPECTOR, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD ALSO NOTES THE AGREEMENT OF THE PARTIES THAT THE ASSISTANT CHIEF PUBLIC HEALTH INSPECTOR IS NOT INCLUDED IN THE BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12657-66-R: CANADIAN STEEL WAREHOUSEMEN WORKERS' UNION No. 201, N.C.C.L.  
(APPLICANT) v. WIMCO STEEL SALES COMPANY LIMITED (RESPONDENT).

BEFORE: J. F. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND J. E. C. ROBINSON.

DECISION OF THE BOARD: APRIL 19, 1967.

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2. THE APPLICANT AND THE RESPONDENT HAVE AGREED THAT A UNIT OF EMPLOYEES DESCRIBED IN THE FOLLOWING TERMS WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING:

ALL EMPLOYEES OF THE RESPONDENT WORKING  
AT ITS MARTINGROVE ROAD PLANT SAVE AND  
EXCEPT ASSISTANT FOREMEN, FOREMEN, PERSONS  
ABOVE THE RANK OF FOREMEN, TRUCK DRIVERS,  
OFFICE AND SALES STAFF, PERSONS REGULARLY  
EMPLOYED FOR TWENTY-FOUR HOURS PER WEEK  
OR LESS AND STUDENTS HIRED FOR THE SCHOOL  
VACATION PERIOD.

IN THE NORMAL CASE, THE BOARD WOULD NOT DEEM IT APPROPRIATE TO EXCLUDE TRUCK DRIVERS FROM AN "INDUSTRIAL" BARGAINING UNIT SUCH AS THAT DESCRIBED ABOVE. AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND, IN PARTICULAR, WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF DRIVERS IN THE EMPLOY OF THE RESPONDENT.

3. HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THE INSTANT CASE, THE BOARD IS SATISFIED THAT THE UNIT OF EMPLOYEES WHOSE DESCRIPTION THE PARTIES HAVE AGREED ON WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT NUMBER APPROXIMATELY THIRTY-FIVE, BEING ROUGHLY HALF OF THE EMPLOYMENT FORCE. THEY APPEAR TO BE ENGAGED PRIMARILY IN "OVER-THE-ROAD" HAULAGE AND WORK SOLELY AS DRIVERS, LENDING OCCASIONAL ASSISTANCE IN LOADING OR UNLOADING AT LOADING AREAS BUT DOING NO WORK INSIDE THE PLANT AND MAKING NO USE OF POWERED LOADING EQUIPMENT. THEY ARE PAID ON A

TRIP BASIS AND THEIR HOURS ARE SUBJECT TO THE LENGTH OF TRIPS, WEATHER CONDITIONS, LAY-OVERS ON ROUTE, AND CUSTOMERS UNLOADING FACILITIES. THEY ARE ON A SEPARATE PAYROLL AND RECEIVE VACATION PAY STAMPS WITH EACH PAY. THERE IS NO INTERCHANGE AS BETWEEN PLANT EMPLOYEES AND DRIVERS. WE WOULD ADD THAT WE SEE NO CONFLICT BETWEEN OUR DECISION WITH RESPECT TO THE BARGAINING UNIT IN THIS CASE AND THAT MADE BY THE BOARD IN THE NORFISH CASE, BOARD FILE NO. 10106-64-R, WHICH, LIKE THE INSTANT CASE, TURNS ON ITS PARTICULAR FACTS.

4. HAVING REGARD TO THE FOREGOING AND TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WORKING AT ITS MARTINGROVE ROAD PLANT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TRUCK DRIVERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12669-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) v. CANADIAN FILTERS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE. APRIL 18, 1967.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, PURCHASING AGENT, SALES REPRESENTATIVES, TIME STUDY OBSERVERS, EQUIPMENT AND METHODS COORDINATOR, TOOL AND DIE COORDINATOR, SALARY-PERSONNEL-ACCOUNTING CLERK, ONE SECRETARY TO THE PRESIDENT, ONE SECRETARY TO THE TREASURER, AND STUDENTS EMPLOYED ON A UNIVERSITY COOPERATIVE BASIS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

2(A) THE BOARD NOTES THE WRITTEN AGREEMENT OF THE PARTIES THAT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND NOT INCLUDED IN THE BARGAINING UNIT.

3. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAD BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF

THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MARCH 22ND, 1967, IN THIS MATTER.

4. WHILE THE EVIDENCE REVEALS THAT F. J. LAWSON, WHO IS EMPLOYED BY THE RESPONDENT AS A BUYER, HAS AUTHORITY TO PLACE PURCHASING ORDERS, WE FIND THAT IN THE PERFORMANCE OF HIS JOB HE WORKS UNDER THE CLOSE GUIDANCE AND SUPERVISION OF THE PURCHASING AGENT. ON ALL THE EVIDENCE, WE FIND THAT F. J. LAWSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

5. ALTHOUGH J. M. BRODIE, WHO IS EMPLOYED BY THE RESPONDENT AS A PRODUCTION PLANNER, CLAIMS TO HAVE THE AUTHORITY TO HIRE AND DISCHARGE EMPLOYEES, HE HAS NEVER EXERCISED SUCH AUTHORITY. MOREOVER, ONLY ONE PERSON WORKS UNDER HIS SUPERVISION. THE EVIDENCE INDICATES THAT BRODIE WORKS UNDER THE DIRECTION OF THE PLANNING SUPERVISOR. WHILE THERE IS EVIDENCE THAT HE HAS RESPONSIBILITY IN PLANNING THE LAY-OFF OF EMPLOYEES, SUCH LAY-OFFS RELATE TO PLANT EMPLOYEES AND NOT THOSE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. THERE IS ALSO EVIDENCE THAT RECENTLY HE HAS TAKEN OVER THE "PRODUCTION MAN'S" RESPONSIBILITIES. THERE IS NO EVIDENCE, HOWEVER, AS TO WHAT THOSE RESPONSIBILITIES ARE. WE FIND ON ALL THE EVIDENCE THAT J. M. BRODIE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

6. ON THE BASIS OF ALL THE EVIDENCE, WE FIND THAT MRS. J. I. PIERS, PERSONNEL STENOGRAPHER, AND L. J. FOX, BUDGET AND COST ANALYST, ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

APRIL 18, 1967.

I DISSENT. I WOULD FIND THAT JACK M. BRODIE, THE PRODUCTION PLANNER, EXERCISES MANAGERIAL FUNCTIONS, AND ACCORDINGLY SHOULD NOT BE DEEMED AN EMPLOYEE FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

THE ONLY EVIDENCE OF HIS DUTIES ARE CONTAINED IN THE EXAMINER'S REPORT DATED THE 22ND DAY OF MARCH, 1967. AFTER INQUIRING INTO THE DUTIES AND RESPONSIBILITIES OF MR. BRODIE, THE EXAMINER REPORTED TO THE BOARD AS FOLLOWS:-

"IN ANSWER TO QUESTIONS BY THE EXAMINER, MR. BRODIE SAID HE HAS BEEN EMPLOYED BY THE RESPONDENT FOR OVER THREE YEARS AND HIS PRESENT POSITION, WHICH HE HAS HELD FOR OVER TWO YEARS, IS THAT OF PRODUCTION PLANNER.

THE WITNESS REPORTS TO THE PLANNING SUPERVISOR, MR. MIKE MCGREGOR. HE HAS ONE PERSON, A PRODUCTION CLERK, WORKING UNDER HIM.

THE WITNESS HAS AUTHORITY TO HIRE AND FIRE ALTHOUGH HE HAS NEVER HAD OCCASION TO HIRE OR FIRE. HE SAID THAT IN ONE INSTANCE HE SPOKE TO HIS SUPERVISOR ABOUT A PERSON AND THE SUPERVISOR SPOKE TO THIS PERSON AND THE MATTER WAS SETTLED. THE WITNESS SAID HE HAD SPOKEN TO THIS PERSON A COUPLE OF TIMES AND THE SITUATION DID NOT GET ANY BETTER. HE THEN SPOKE TO HIS SUPERVISOR WHO IN TURN SPOKE TO THE PERSON INVOLVED.

THE WITNESS SAID HE COULD INDIRECTLY REPRIMAND A PERSON THROUGH THE PLANNING SUPERVISOR. HE THEN SAID HE COULD REPRIMAND A PERSON UNDER HIM ALTHOUGH HE HAS NEVER HAD AN OCCASION TO DO SO.

HE CAN RECOMMEND THAT A PERSON RECEIVE A PAY INCREASE ALTHOUGH HE HAS NEVER DONE SO. HE SAID HE HAS HAD A PERSON WORKING UNDER HIM FOR 15 MONTHS.

THE WITNESS SAID HE COULD GIVE THE PERSON WORKING UNDER HIM TIME OFF FOR A GOOD CAUSE DEPENDING ON THE LENGTH OF TIME THE PERSON WANTED OFF, AND THE REASON THAT HE WANTED THE TIME OFF. HE HAS HAD OCCASION TO GIVE THIS PERSON A DAY OFF ON HIS OWN AUTHORITY.

THE WITNESS HAS A KEY TO THE PLANT.

THE WITNESS IS PAID A SALARY AND EARNS MORE THAN THE PERSON WHO IS WORKING UNDER HIM. HE SAID HE IS AWARE OF THIS OTHER PERSON'S SALARY AND THAT HE (THE WITNESS) EARNED APPROXIMATELY 35% MORE THAN THIS OTHER PERSON.

THE WITNESS HAD HAD NO MEETINGS WITH MANAGEMENT WHERE MATTERS PERTAINING TO LABOUR RELATIONS HAVE BEEN DISCUSSED.

THE WITNESS IS RESPONSIBLE TO THE PLANNING SUPERVISOR AND IS RESPONSIBLE FOR TELLING HIM THE PROBLEMS THAT MAY ARISE. THE WITNESS DOES THE SCHEDULING FOR THE PRESS AND ASSEMBLY DEPARTMENTS FOR BOTH PLANTS IN ORDER TO MAINTAIN A PRE-DETERMINED INVENTORY LEVEL. IN THE COURSE OF THIS WORK HE WORKS WITH THE METHODS CO-ORDINATOR AND THE FOREMAN WITH RESPECT TO PROBLEMS IN THEIR PARTICULAR DEPARTMENTS.

THE WITNESS DOES ORDERING FOR SOME ASSEMBLIES FROM OUTSIDE SOURCES ON HIS OWN AUTHORITY. HE ESTIMATED THAT THE AMOUNT OF THESE PURCHASES WOULD BE APPROXIMATELY \$10,000.00. HE SAID THE PURCHASING DEPARTMENT ORDERS PARTS FROM THE PRODUCTION SCHEDULE WHICH HE PREPARES.



HE SAID HE IS RESPONSIBLE FOR SEEING THAT THEY DO NOT RUN OUT OF STOCK AS WELL AS MAKING SURE THAT THERE IS NOT TOO MANY CLEANERS AND PARTS IN STOCK IN CASE OF OBSOLESCENCE.

THE WITNESS SAID HE IS INDIRECTLY RESPONSIBLE FOR LAY-OFFS AND MACHINE LOADING. FROM HIS SCHEDULE HE CAN TELL IF THERE SHOULD BE A LAY OFF OR A MACHINE LOADING. THE WITNESS WOULD REPORT THIS TO THE PLANNING SUPERVISOR. HE SAID THAT A CASE SIMILAR TO THIS HAS HAPPENED IN THE PAST MONTH.

THE WITNESS SAID THAT HE ALSO DOES WORK ORDERING SPECIAL PARTS THROUGH THE MODEL SHOP.

FROM DAY TO DAY REPORTS HE WOULD SCHEDULE CHANGES TO THE PURCHASING DEPARTMENT SO THEY CAN CHANGE THEIR PURCHASING REQUISITIONS. HE MAKES SURE THAT THE PRODUCTION CLERK UNDER HIM KEEPS WITH THE REQUIREMENTS AT A SUFFICIENT QUANTITY SO THAT THERE IS NO LOSS IN PRODUCTION TIME.

THE WITNESS SAID THAT HE WOULD BE THE FIRST PERSON TO BE AWARE OF A LAY-OFF. THE WITNESS WOULD MAKE HIS RECOMMENDATION IN THIS REGARD TO THE PLANNING SUPERVISOR. IF HE FELT A LAY-OFF WERE REQUIRED AT THE OTHER PLANT HE WOULD SPEAK TO HIS SUPERVISOR AND HIS SUPERVISOR WOULD THEN TALK TO THE SUPERVISOR AT THE OTHER PLANT. THE WITNESS WOULD DISCUSS WITH THEM THE NUMBER OF PERSONS TO BE LAID OFF. THE WITNESS SAID HE WOULD ADVISE HIM OF THE NUMBER OF ITEMS IN THE PLANT AND IT WOULD BE UP TO THE OTHER TO MAKE THE DECISION TO LAY OFF ONE MAN PER LINE.

IN ANSWER TO QUESTIONS BY MR. CORNWALL, REPRESENTING THE APPLICANT, THE WITNESS SAID THAT NO NOTICE HAS BEEN CIRCULATED BY THE COMPANY ADVISING THE EMPLOYEES THAT HE IS THE SUPERVISOR.

HE SAID HE COULD HIRE OR FIRE THE PERSON UNDER HIM. HE WAS TOLD HE HAD THIS AUTHORITY BY THE PLANNING SUPERVISOR, WHO IS THE WITNESS'S IMMEDIATE BOSS.

THE WITNESS SAID THE OTHER PERSON DOES NOT DO PLANNING. THE WITNESS SAID THAT HE IS THE ONLY PERSON WHO DOES THIS AND THE OTHER PERSON DOES INCIDENTAL WORK SUCH AS KEEPING TRACK OF RECORDS AND MAKING OUT PRESS ORDER CARDS ETC.

HE SAID BEFORE FIRING THE PERSON UNDER HIM HE WOULD DEFINITELY DISCUSS IT WITH HIS BOSS. THEN HE WOULD GO BACK AND DISCUSS IT WITH THE MAN. HE SAID THAT IF IT WERE A CONTINUING THING THAT HE WOULD FIRE THE MAN HIMSELF. HE WOULD BE SURE THE PERSON HAD AN AMPLE WARNING, HOWEVER, BEFORE DOING SO. HE SAID IF THE PERSON WERE ON PROBATION HE WOULD LET HIM GO IMMEDIATELY.

THE WITNESS SAID THAT BECAUSE OF PLANNING HE WOULD KNOW OF A FORTH COMING LAY-OFF AND OF PROPOSED HIRING. HE SAID THIS INFORMATION WOULD BE ONLY INDIRECT AND HE WOULD INFORM HIS SUPERVISOR.

THE WITNESS SAID HE DOES NOT RECEIVE REQUISITIONS FROM ANYONE. HE JUST GOES AHEAD AND MAKES UP THE PURCHASE FOR THE OUTSIDE ASSEMBLY. HE SAID HE WOULD KNOW FROM THE SCHEDULING WHAT IS REQUIRED. THE WITNESS WOULD ORDER THE ZINC PLATING ETC. TO BE DONE FROM OUTSIDE SOURCES FROM THE SCHEDULE. HE SAID THIS IS DONE OUTSIDE THE PURCHASING DEPARTMENT AND IS GENERALLY DONE 95% OF THE TIME ON HIS OWN AUTHORITY.

IN ANSWER TO QUESTIONS BY MR. GEE, REPRESENTING THE RESPONDENT, THE WITNESS SAID THE PRODUCTION MAN'S JOB HAS BEEN ABOLISHED FOR THE LAST SEVERAL MONTHS. THE WITNESS TOOK OVER THE PRODUCTION MAN'S JOB AND HIS RESPONSIBILITIES.

IN ANSWER TO A FURTHER QUESTION BY MR. CORNWALL THE WITNESS SAID THAT HE WAS NOT NOTIFIED THAT HE WAS TO ASSUME THE PRODUCTION MAN'S RESPONSIBILITIES AND HE JUST TOOK IT FOR GRANTED."

INTER ALIA, I AM IMPRESSED THAT MR. BRODIE HAS THE AUTHORITY TO HIRE AND FIRE AS WELL AS REPRIMAND A PERSON UNDER HIM. SURELY THIS IS ONE TEST OF WHETHER OR NOT A PERSON EXERCISES MANAGERIAL FUNCTIONS. IT IS THE AUTHORITY WHICH HAS BEEN GIVEN TO HIM IN THAT REGARD, NOT WHETHER HE HAD EVER EXERCISED SUCH AUTHORITY.

IT IS NOT WITHOUT INTEREST THAT IN TERMINATION APPLICATIONS BEFORE THIS BOARD AS WELL AS IN APPLICATIONS INVOLVING PETITIONS, ONE OF THE FIRST QUESTIONS OFTEN ASKED BY THE BOARD OF WITNESSES SUPPORTING THE TERMINATION OR PETITION IS WHETHER OR NOT THEY HAVE THE AUTHORITY TO HIRE, FIRE OR REPRIMAND EMPLOYEES. UP TO DATE, I HAD NOT CONSIDERED SUCH A QUESTION TO BE FACETIOUS. I HAD CONSIDERED THAT IT WAS ASKED BY THE BOARD TO DETERMINE WHETHER OR NOT SUCH WITNESS EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT.

I DISSENT. I WOULD FIND THE JERRY LAWSON, BUYER, EXERCISES MANAGERIAL FUNCTIONS.

THE EXAMINER REPORTED TO THE BOARD THAT MR. LAWSON HAD HELD THE POSITION OF BUYER FOR THE COMPANY SINCE JULY OF 1966 AND THAT HE HAD TWO PEOPLE WORKING UNDER HIM. WHILE HE HAD NO AUTHORITY TO HIRE OR FIRE, HE WAS AUTHORIZED TO MAKE SUCH RECOMMENDATIONS. HE DID HAVE AUTHORITY TO REPRIMAND EMPLOYEES. IN HIS CAPACITY OF SUPERVISOR IN THE ABSENCE OF THE PURCHASING AGENT, HE COULD GRANT TIME OFF TO A PERSON. HE HAS AUTHORITY TO PLACE ALL PURCHASING ORDERS REGARDING PRODUCTION PARTS, THE COSTING OF CLEANERS AND ASSEMBLIES AND THE INTERVIEWING OF SALESMEN.

HE PLACES PURCHASING ORDERS ON HIS OWN AUTHORITY. HE DETERMINES THE SUPPLIER AND NEGOTIATES THE PRICE. THE COMPANY'S PURCHASES EXCEED 1 $\frac{1}{2}$  MILLION DOLLARS A YEAR. WHILE HE DISCUSSES THE PURCHASE WITH THE PURCHASING AGENT BEFORE PLACING THE ORDER, THE FINAL DECISION REGARDING THE PURCHASE IS UP TO HIM.

IN ADDITION, HE IS IN CHARGE OF THE TWO PERSONS IN HIS DEPARTMENT AND THE DEPARTMENT WAS SO NOTIFIED. HIS DECISION REGARDING THE SUPPLIER OF PURCHASES ARE MADE BY HIM WITHOUT CONSULTATION AND ARE MADE BASED ON THE VENDOR'S INTEGRITY, PRICE ETC. HE PURCHASES NOT ONLY FOR THE PLANT WHERE HE IS LOCATED, BUT FOR A SECOND COMPANY PLANT WHICH IS SITUATED SOME SEVEN BLOCKS AWAY.

ON THE BASIS OF ALL OF THE EVIDENCE BEFORE ME, I WOULD FIND THAT MR. LAWSON SHOULD BE EXCLUDED FROM THE BARGAINING UNIT AS EXERCISING MANAGERIAL FUNCTIONS.

I CONCUR WITH THE DECISION OF THE MAJORITY THAT MRS. J. I. PIERS, PERSONNEL STENOGRAPHER, AND L. J. FOX, BUDGET AND COST ANALYST, ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND, THEREFORE, ARE NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT.

12671-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 48 (APPLICANT) v. CRESTILE LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: L. C. ARNOLD, R. NETTLETON AND F. MULLOY FOR THE APPLICANT, N. M. W. PAULIN AND B. UPTON FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 7, 1967.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL PLASTERERS AND PLASTERERS' APPRENTICES IN BOARD CONSTRUCTION INDUSTRY DIVISION GEOGRAPHIC AREA #8. THE RESPONDENT ALLEGES THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THERE IS ALREADY A COLLECTIVE AGREEMENT IN EFFECT BETWEEN ITSELF AND THE APPLICANT.

2. THERE WAS FILED WITH THE BOARD A COPY OF A FORM OF COLLECTIVE AGREEMENT EFFECTIVE FROM MAY 1ST, 1961 TO APRIL 30TH, 1965. THIS AGREEMENT CONTAINS NO AUTOMATIC RENEWAL CLAUSE. IT DOES, HOWEVER, PROVIDE THAT SHOULD EITHER PARTY DESIRE TO CHANGE, ADD TO, AMEND OR TERMINATE THE AGREEMENT, BOTH PARTIES AGREE TO GIVE THE OTHER PARTY WRITTEN NOTICE TO THAT EFFECT 90 DAYS BEFORE THE TERMINATION DATE. ACCORDING TO THE EVIDENCE EACH INDIVIDUAL PLASTERING CONTRACTOR WHO WAS A MEMBER OF THE CONTRACTING PLASTERERS' ASSOCIATION OF TORONTO (HEREIN-AFTER REFERRED TO AS THE ASSOCIATION) ENTERED INTO THIS FORM OF COLLECTIVE AGREEMENT WITH THE APPLICANT. PLASTERING CONTRACTORS WHO WERE NOT MEMBERS OF THE

ASSOCIATION ALSO ENTERED INTO THE SAME FORM OF COLLECTIVE AGREEMENT WITH THE APPLICANT. THE RESPONDENT, HOWEVER, WHO IS NOT A MEMBER OF THE ASSOCIATION DID NOT EXECUTE WITH THE APPLICANT THE FORM OF COLLECTIVE AGREEMENT FILED WITH THE BOARD.

3. THERE IS NO EVIDENCE AS TO WHETHER THE APPLICANT OR ANY OF THE SIGNATORIES TO THE ABOVE FORM OF COLLECTIVE AGREEMENT GAVE NOTICE TO THE OTHER PARTY TO THE AGREEMENT OF ITS DESIRE TO AMEND OR TERMINATE THE COLLECTIVE AGREEMENT. ACCORDINGLY, WE DO NOT KNOW WHETHER ANY OF THE COLLECTIVE AGREEMENTS ENTERED INTO BY THE APPLICANT AND THE INDIVIDUAL PLASTERING CONTRACTORS CONTINUED IN FORCE AFTER APRIL 30TH, 1965, OR TERMINATED ON THAT DATE. BE THAT AS IT MAY, THERE IS EVIDENCE THAT IN NOVEMBER OF 1964, THE APPLICANT AND THE ASSOCIATION DID ENTER INTO NEGOTIATIONS WHICH RESULTED IN AN AGREEMENT ON A SCHEDULE OF WAGE RATES DIFFERENT FROM THAT SET OUT IN THE ABOVE COLLECTIVE AGREEMENT SIGNED BY THE APPLICANT AND INDIVIDUAL PLASTERING CONTRACTORS. THE APPLICANT AND THE ASSOCIATION FURTHER AGREED UPON A NEW PACKAGE WELFARE AND FRINGE BENEFIT PROGRAM UNDER WHICH EMPLOYERS WOULD PAY EACH MONTH FOR HOURS WORKED DURING THE PREVIOUS MONTH, 47¢ PER HOUR FOR EVERY HOUR WORKED STRAIGHT TIME BY EVERY MEMBER OF THE APPLICANT. SUCH AMOUNTS WERE TO BE PAYABLE TO THE JOINTLY-TRUSTEED ONTARIO PLASTERERS' TRUST FUND.

4. THE ABOVE OUTLINED AGREEMENTS, ALTHOUGH NOT REDUCED TO WRITING AT THAT TIME, BECAME EFFECTIVE IN DECEMBER OF 1964. THE PLASTERING CONTRACTORS WHO HAD COLLECTIVE AGREEMENTS WITH THE APPLICANT COMPLIED WITH THE NEW ARRANGEMENTS. THE RESPONDENT ALSO VOLUNTARILY COMPLIED. (THE RESPONDENT, HOWEVER, PAID ONLY 40¢ RATHER THAN 47¢ INTO TRUST FUND, AS 7¢ OF THE TOTAL PACKAGE AMOUNT WAS DESIGNATED FOR THE ASSOCIATION'S INFORMATION CENTRE. THE RESPONDENT TOOK THE POSITION THAT SINCE IT WAS NOT A MEMBER OF THE ASSOCIATION, IT WAS UNDER NO OBLIGATION TO CONTRIBUTE SUPPORT TO THE CENTRE.) THE CHANGES IN THE WAGE SCHEDULE AND THE PACKAGE WELFARE AND FRINGE BENEFIT PROGRAM SUBSEQUENTLY WERE INCORPORATED INTO A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE ASSOCIATION DATED JANUARY 19TH, 1965. THAT AGREEMENT WHICH WAS NOT EXECUTED BY THE PARTIES UNTIL MARCH OF 1966 WAS MADE RETROACTIVE TO SEPTEMBER 1ST, 1964 AND HAS AN EXPIRY DATE OF APRIL 30TH, 1969.

5. SINCE ABOUT 1963, WHEN THE RESPONDENT COMMENCED TO DO ITS OWN PLASTERING WORK REQUIRED IN THE EXECUTION OF ITS CONTRACTS (PREVIOUSLY IT HAD SUB-CONTRACTED SUCH WORK) TO THE PRESENT TIME, THE APPLICANT HAS PROVIDED THE RESPONDENT WITH MEMBERS OF THE UNION TO DO THE REQUIRED WORK. THE RESPONDENT, FOR ITS PART, DURING ALL OF THIS PERIOD HAS ALWAYS CONFORMED WITH THE WAGES, WELFARE AND FRINGE BENEFITS (WITH THE EXCEPTION OF THE 7¢ PER HOUR REFERRED TO ABOVE) PAID BY THOSE PLASTERING CONTRACTORS WHO HAD COLLECTIVE AGREEMENTS WITH THE APPLICANT. THE EVIDENCE IS THAT THE RESPONDENT KEPT ITSELF INFORMED OF THE CURRENT WAGE RATES AND WORKING CONDITIONS APPLICABLE TO MEMBERS OF THE APPLICANT FROM INFORMATION BULLETINS SUPPLIED BY THE TORONTO CONSTRUCTION ASSOCIATION.

6. ON MAY 5TH, 1965, HOWEVER, BRUCE B. UPTON, THE PRESIDENT OF THE RESPONDENT, AND EDWARD THOMPSON, THE THEN BUSINESS MANAGER OF THE APPLICANT, EXECUTED A DOCUMENT ON BEHALF OF THE RESPONDENT AND THE APPLICANT RESPECTIVELY,



IN THE OFFICE OF THE RESPONDENT BUT UPON THE STATIONERY OF THE APPLICANT, THE BODY OF WHICH READS AS FOLLOWS:

EFFECTIVE AS OF MAY 5TH, 1965, CRESTILE LIMITED, AND THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 48, (HEREAFTER REFERRED TO AS LOCAL 48) AGREE EACH WITH THE OTHER AS FOLLOWS:

- (1) UNTIL SUCH TIME AS THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 3 HEREOF HAS BEEN EXECUTED BY BOTH CRESTILE LIMITED AND LOCAL 48, THE WITHIN AGREEMENT SHALL BE THE COLLECTIVE AGREEMENT IN FORCE BETWEEN CRESTILE LIMITED AND LOCAL 48, AND SHALL CONTINUE IN FORCE UNTIL THE DATE UPON WHICH THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 3 HEREOF HAS BEEN EXECUTED BY BOTH CRESTILE LIMITED AND LOCAL 48, OR UNTIL APRIL 30TH, 1969, WHICHEVER DATE SHALL LAST OCCUR.  
  
UNTIL THE DATE UPON WHICH THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 3 HEREOF HAS BEEN EXECUTED BY BOTH CRESTILE LIMITED AND LOCAL 48, EACH OF CRESTILE LIMITED AND LOCAL 48 SHALL ABIDE BY THE RATES OF PAY AND WORKING CONDITIONS CURRENTLY IN FORCE. LOCAL 48 SHALL SUPPLY CRESTILE LIMITED WITH SUCH TRADESMEN AS CRESTILE LIMITED SHALL REQUIRE.
- (2) FORTHWITH UPON LOCAL 48 ENTERING INTO A COLLECTIVE AGREEMENT WITH THE CONTRACTING LATHING AND PLASTERING ASSOCIATION OF ONTARIO, LOCAL 48 SHALL DELIVER A TRUE COPY THEREOF TO CRESTILE LIMITED.
- (3) FORTHWITH UPON THE DELIVERY TO CRESTILE LIMITED OF A TRUE COPY OF THE LAST MENTIONED COLLECTIVE AGREEMENT, CRESTILE LIMITED AND LOCAL 48 SHALL ENTER INTO A NEW COLLECTIVE AGREEMENT TO REPLACE THE WITHIN COLLECTIVE AGREEMENT, AND SUCH NEW COLLECTIVE AGREEMENT SHALL BE ON THE SAME TERMS, AND FOR THE SAME PERIOD OF TIME, AS THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN LOCAL 48 AND THE SAID ASSOCIATION, SUBJECT TO ANY AMENDMENTS THERETO AS MAY BE REQUIRED BY REASON OF THE FACT THAT CRESTILE LIMITED IS NOT A MEMBER OF THE SAID ASSOCIATION.

ACCORDING TO THE EVIDENCE NO AGREEMENT WAS ATTACHED TO THE DOCUMENT AT THE TIME THAT IT WAS EXECUTED.

7. THE RESPONDENT SUBMITS THAT THE ABOVE QUOTED DOCUMENT WHICH BEARS THE DATE OF MAY 5TH, 1965, TOGETHER WITH THE FORM OF COLLECTIVE AGREEMENT WITH EXPIRY DATE OF APRIL 30TH, 1965 REFERRED TO IN PARAGRAPH 4, CONSTITUTES THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT AND THAT IT IS A BAR TO THE INSTANT APPLICATION. THE RESPONDENT ARGUES THAT THE WORDS "WITHIN AGREEMENT" REFERRED TO IN PARAGRAPH 1 OF ITEM (1) OF THE MAY 5TH, 1965 DOCUMENT CAN ONLY MEAN THE FORM OF COLLECTIVE AGREEMENT ENTERED INTO BY THE APPLICANT AND INDIVIDUAL CONTRACTORS WITH EXPIRY DATE OF APRIL 30TH, 1965. THE APPLICANT ARGUES THAT THE REFERENCE TO THE "WITHIN AGREEMENT" IS TOO INDEFINITE TO INCORPORATE THAT OR ANY OTHER COLLECTIVE AGREEMENT.

8. IN THE ROSSI'S BAKERY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY 1964, P. 266, THE POSITION THAT THE BOARD HAS TAKEN AS TO THE CONSTITUENTS OF A COLLECTIVE AGREEMENT IS SET OUT IN THE FOLLOWING TERMS:

IN THE OPINION OF THE BOARD, IT IS NOT NECESSARY THAT A COLLECTIVE AGREEMENT CONSIST OF ONE DOCUMENT ONLY. NOTHING IN THE ACT LAYS DOWN EXPLICITLY OR IMPLICITLY THAT THERE CAN BE ONLY ONE DOCUMENT INVOLVED. THE ONLY EXPLICIT FORMAL REQUIREMENT IS THAT THE AGREEMENT BE IN WRITING. IMPLICIT IS THE REQUIREMENT OF SIGNATURES. IT IS QUITE IN ORDER, THEN, FOR PARTIES TO INCORPORATE INTO AN AGREEMENT BY REFERENCE AS MANY DOCUMENTS AS THEY DEEM USEFUL AND NECESSARY, SO THAT MORE MULTIPLICITY OF DOCUMENTS, PROVIDED THEY ARE PROPERLY INCORPORATED, DOES NOT AFFECT THE VALIDITY OF AN AGREEMENT AS A COLLECTIVE AGREEMENT UNDER THE ACT.

9. IN THE INSTANT CASE, HAVING CONSIDERED ALL OF THE EVIDENCE, WE ARE OF THE OPINION THAT THE "WITHIN AGREEMENT" REFERRED TO IN PARAGRAPH 1 OF ITEM (1) OF THE DOCUMENT OF MAY 5TH, 1965 EITHER INCORPORATES THE FORM OF COLLECTIVE AGREEMENT EXPIRING ON APRIL 30TH, 1965 OR REFERS TO THE DOCUMENT OF MAY 5TH, 1965 ITSELF.

10. IN SUPPORT OF THE FORMER INTERPRETATION WE WOULD FIRST POINT OUT THAT THE FORM OF COLLECTIVE AGREEMENT EXPIRING ON APRIL 30TH, 1965 WAS THE ONLY WRITTEN AGREEMENT IN EXISTENCE AFFECTING THE MEMBERS OF THE APPLICANT, AT THE TIME THE MAY 5TH, 1965 DOCUMENT WAS EXECUTED. MOREOVER, WE FIND THE PROVISION IN PARAGRAPH 2 OF ITEM (1) OF THE DOCUMENT OF MAY 5TH, 1965 WHICH STATES THAT THE APPLICANT AND THE RESPONDENT "SHALL ABIDE BY THE RATES OF PAY AND WORKING CONDITIONS CURRENTLY IN FORCE" LENDS ADDED WEIGHT TO THE ABOVE INTERPRETATION. THAT IS TO SAY, THE PROVISION WOULD APPEAR TO HAVE BEEN DESIGNED TO GIVE RECOGNITION TO THE FACT THAT AS OF DECEMBER OF 1964, THE MONETARY PROVISIONS OF THE FORM OF COLLECTIVE AGREEMENT WITH EXPIRY DATE OF APRIL 30TH, 1965 CEASED TO BE EFFECTIVE, HAVING BEEN SUPERSEDED BY THE ORAL AGREEMENT BETWEEN THE APPLICANT AND THE ASSOCIATION. WE WOULD FINALLY MENTION THAT WHETHER OR NOT THE COLLECTIVE AGREEMENT WITH EXPIRY DATE OF APRIL 30TH, 1965 DID OR DID NOT ACTUALLY TERMINATE ON THAT DATE PLACES NO LIMITATION UPON THAT FORM OF COLLECTIVE AGREEMENT BEING INCORPORATED BY REFERENCE INTO THE DOCUMENT OF MAY 5TH, 1965.

11. ALTERNATIVELY, IN OUR VIEW, IF THE "WITHIN AGREEMENT" DOES NOT INCORPORATE THE FORM OF COLLECTIVE AGREEMENT WITH EXPIRY DATE OF APRIL 30TH, 1965, THAT REFERENCE CAN ONLY MEAN THE DOCUMENT OF MAY 5TH, 1965 ITSELF. SINCE PARAGRAPH 2 OF ITEM (1) OF THE DOCUMENT BINDS THE APPLICANT AND THE RESPONDENT TO THE "RATE OF PAY AND WORKING CONDITIONS CURRENTLY IN FORCE", WHICH RELATES TO THE ABOVE ORAL AGREEMENT, THE PARTIES HAVE COMPLIED WITH ALL OF THE ESSENTIAL REQUIREMENTS OF A COLLECTIVE AGREEMENT.

12. THE BOARD ACCORDINGLY, ON THE BASIS OF THE ABOVE ALTERNATIVES, FINDS THAT THE APPLICANT AND THE RESPONDENT DID ENTER INTO A COLLECTIVE AGREEMENT ON MAY 5TH, 1965.

13. WE WOULD NOW TURN OUR ATTENTION TO THE DURATION PROVISIONS OF THE DOCUMENT OF MAY 5TH, 1965. HAVING IN MIND THE BOARD'S FINDING IN THE PRECEDING PARAGRAPH, THE COLLECTIVE AGREEMENT ENTERED INTO ON MAY 5TH, 1965 PROVIDES THAT IT IS TO REMAIN IN EFFECT BETWEEN THE APPLICANT AND THE RESPONDENT UNTIL SUCH TIME AS THE PARTIES ENTER INTO A NEW COLLECTIVE AGREEMENT OR UNTIL APRIL 30TH, 1969, WHICHEVER DATE SHALL LAST OCCUR. THE DOCUMENT SPECIFIES THAT THE NEW COLLECTIVE AGREEMENT WILL TAKE THE SAME FORM AS THE COLLECTIVE AGREEMENT THAT IS ENTERED INTO BY THE APPLICANT AND THE CONTRACTING LATHING AND PLASTERING ASSOCIATION OF ONTARIO, SUBJECT TO ANY AMENDMENTS AS MAY BE REQUIRED BY REASON OF THE FACT THAT THE RESPONDENT IS NOT A MEMBER OF THE ASSOCIATION.

14. WE WOULD FIRST POINT OUT THAT HAVING REGARD TO THE ENTIRE DOCUMENT, IT IS CLEAR THAT THE INTENTION OF THE PARTIES WAS THAT THE COLLECTIVE AGREEMENT WAS TO REMAIN IN EFFECT UNTIL THE NEW AGREEMENT REFERRED TO ABOVE WAS EXECUTED BY THE PARTIES OR UNTIL APRIL 30TH, 1969, WHICHEVER DATE FIRST OCCURS, RATHER THAN LAST OCCURS AS PROVIDED FOR IN PARAGRAPH 1 OF ITEM (1) OF THE DOCUMENT. SECONDLY, IT IS CLEAR THAT THE PARTIES WERE REFERRING TO THE CONTRACTING PLASTERERS' ASSOCIATION OF TORONTO AND NOT THE CONTRACTING LATHING AND PLASTERING ASSOCIATION OF ONTARIO.

15. IN VIEW OF THE PROVISION FOR ALTERNATIVE EXPIRY DATES, ONE BEING WHOLLY DEPENDENT UPON THE EXECUTION BY THE APPLICANT OF A COLLECTIVE AGREEMENT WITH ANOTHER PARTY, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT WAS TO REMAIN IN EFFECT FOR AN UNSPECIFIED TERM (SEE THE COBALT FOUNDRY LIMITED CASE (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,119, C.L.S. 76-616). IN THESE CIRCUMSTANCES PURSUANT TO SECTION 39(1) OF THE ACT THE COLLECTIVE AGREEMENT IS DEEMED TO OPERATE FOR A TERM OF ONE YEAR FROM THE DATE OF ITS COMMENCEMENT. IN OTHER WORDS, THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT WAS FROM MAY 5TH, 1965 TO MAY 4TH, 1966. THE BOARD THEREFORE FINDS THAT ON THE LATTER DATE THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT EXPIRED.

16. THE APPLICANT, HOWEVER, CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE PLASTERERS EMPLOYED BY THE RESPONDENT, AND THE EVIDENCE OF THE APPLICANT'S EFFORTS IN SEPTEMBER OF 1966 AND JANUARY OF 1967 TO HAVE THE RESPONDENT EXECUTE AN IDENTICAL FORM OF COLLECTIVE AGREEMENT TO THAT ENTERED INTO BY THE APPLICANT AND THE ASSOCIATION DATED JANUARY 19TH, 1965 INDICATES

THAT THE APPLICANT HAD NOT ABANDONED ITS BARGAINING RIGHTS. WE WOULD MENTION THAT THE EVIDENCE IS THAT THE RESPONDENT REFUSED TO SIGN SUCH A FORM OF COLLECTIVE AGREEMENT WITHOUT CERTAIN MODIFICATION TO TAKE INTO ACCOUNT THE FACT THAT THE RESPONDENT IS NOT A MEMBER OF THE ASSOCIATION AS PROVIDED FOR IN THE DOCUMENT OF MAY 5TH, 1965.

17. THE BOARD HAVING FOUND THAT THE APPLICANT ALREADY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION, PURSUANT TO SECTION 5(1) OF THE ACT, THE BOARD FURTHER FINDS THAT THE INSTANT APPLICATION IS UNTIMELY.

18. WE NOTE THAT THE RESPONDENT IN ITS REPLY ALTERNATIVELY SUBMITS THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THE BOARD HAVING FOUND THAT THE APPLICANT AND THE RESPONDENT DID ENTER INTO A COLLECTIVE AGREEMENT AS ALLEGED BY THE RESPONDENT, IT IS NOT NECESSARY FOR THE BOARD TO ENTERTAIN THE RESPONDENT'S ALTERNATIVE SUBMISSION CONCERNING THE STATUS OF THE APPLICANT.

19. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

20. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

21. THE BOARD FURTHER FINDS THAT THE ALTERNATIVE ALLEGATIONS OF THE RESPONDENT AS SET OUT IN PARAGRAPH 2 AND 3 OF APPENDIX "B" OF ITS REPLY WHICH ARE PARTICULARIZED IN APPENDIX "C" OF ITS REPLY CAN HAVE NO BEARING OR EFFECT ON THE INSTANT APPLICATION. THE BOARD ACCORDINGLY DOES NOT PROPOSE TO ENTERTAIN THESE ALLEGATIONS.

22. HAVING FOUND THAT THE APPLICANT ALREADY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED IN THIS APPLICATION, THE APPLICATION IS DISMISSED.

12695-66-R: COMMUNICATIONS WORKERS OF AMERICA, AFL, CIO & CLC (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) v. NORTHERN ELECTRIC EMPLOYEE ASSOCIATION (INTERVENER).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT HEARING: M. LEVINSON AND B. MATHER FOR THE APPLICANT,  
D. J. NEWTON, L. A. WATT AND R. L. BOLTON FOR THE RESPONDENT,  
I. SCOTT AND G. P. MEEHAN FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 4, 1967.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL OF ITS EMPLOYEES BASED



IN OTTAWA, CORNWALL, BELLEVILLE AND KINGSTON EMPLOYED ON THE INSTALLATION OF TELEPHONE AND TELECOMMUNICATIONS EQUIPMENT SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN. THE RESPONDENT AND THE INTERVENER SUBMIT THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE INTERVENER HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT SOUGHT BY THE APPLICANT AND THESE EMPLOYEES ARE COVERED BY A CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

3. THE INTERVENER WAS CERTIFIED BY THE QUEBEC LABOUR RELATIONS BOARD ON JULY 12TH, 1945 FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF "ALL NON-SUPERVISORY HOURLY RATED EMPLOYEES IN THE PROVINCE OF QUEBEC EXCLUDING WATCHMEN AND PRINTING TRADES." SINCE THAT TIME THE RESPONDENT AND THE INTERVENER HAVE CONTINUED TO BE PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS THE MOST RECENT ONE BEING EFFECTIVE FROM FEBRUARY 26TH, 1965 UNTIL FEBRUARY 25TH, 1968. ARTICLE 1 THE RECOGNITION CLAUSE OF THAT AGREEMENT READS AS FOLLOWS:

WHEREAS THE NORTHERN ELECTRIC EMPLOYEE ASSOCIATION WAS DULY CERTIFIED UNDER THE LABOUR RELATIONS ACT BY THE LABOUR RELATIONS BOARD OF THE PROVINCE OF QUEBEC ON JULY 13TH, 1945, THE COMPANY RECOGNIZES THE ASSOCIATION AS THE EXCLUSIVE BARGAINING AGENT FOR THE FOLLOWING HOURLY RATED NON-SUPERVISORY EMPLOYEES.

1. EMPLOYEES IN THE INSTALLATION DEPARTMENT AND EMPLOYEES IN THE OUTSIDE PLANT DEPARTMENT, WHOSE BASE POINT IS IN THE PROVINCE OF QUEBEC. THIS GROUP OF EMPLOYEES FORMS UNIT #2 OF THE ASSOCIATION.

(THE CERTIFIED COPY OF THE CERTIFICATE OF THE QUEBEC BOARD FILED IN THIS MATTER BEARS ONE DATE OF JULY 12, 1945).

4. THE INTERVENER WAS ALSO CERTIFIED BY THIS BOARD ON JULY 31ST, 1950 FOR ALL EMPLOYEES OF THE RESPONDENT "WORKING IN TORONTO OR WHO HAVE THEIR HEADQUARTERS IN TORONTO WHO ARE EMPLOYED IN CONNECTION WITH THE REPAIR, DISTRIBUTION, INSPECTION OR INSTALLATION OF TELEPHONE EQUIPMENT, INCLUDING THE STAFFS OF THE TELEPHONE CONTRACT SHOP, WAREHOUSE AND TELEPHONE INSTALLATION DEPARTMENT" WITH CERTAIN EXCEPTIONS WHICH ARE NOT HERE MATERIAL. SINCE CERTIFICATION, THE RESPONDENT AND THE INTERVENER HAVE BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS. THE MOST RECENT AGREEMENT IS EFFECTIVE FROM NOVEMBER 1ST, 1964 TO OCTOBER 31ST, 1967. ARTICLE 1 OF THAT AGREEMENT ENTITLED RECOGNITION AND SCOPE READS AS FOLLOWS:

WHEREAS THE UNION WAS DULY CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD ON JULY 31ST, 1950, THE COMPANY RECOGNIZES THE UNION AS THE SOLE AND EXCLUSIVE BARGAINING AGENCY WITH RESPECT TO WAGES, HOURS, AND WORKING CONDITIONS FOR EMPLOYEES OF THE WESTERN REGION INSTALLATION WHO HAVE THEIR HEADQUARTERS IN TORONTO, AND WHO ARE EMPLOYED IN CONNECTION WITH THE INSTALLATION OF COMMUNICATIONS

AND RELATED EQUIPMENT, SAVE AND EXCEPT INSTALLATION SUPERVISORS AND ALL OTHER PERSONS WHO ARE FOREMEN OR ABOVE THE RANK OF FOREMAN, AND OTHER FIRST LINE SUPERVISORY POSITIONS WHICH ARE TO BE AGREED UPON.

5. THE EVIDENCE IS THAT MONTREAL IS THE HEAD OFFICE OF THE RESPONDENT COMPANY AND IS ALSO THE HEADQUARTERS OR "BASE POINT" FOR ALL OF THE EASTERN REGION. DURING THE PERIOD THAT THE RESPONDENT AND THE INTERVENER HAVE HAD A COLLECTIVE BARGAINING RELATIONSHIP THE RESPONDENT HAS ESTABLISHED "BASES" IN SHERBROOKE, CHICOUTIMI, QUEBEC CITY, OTTAWA, ST. JOHN, MONCTON AND ST. JOHN'S. MORE RECENTLY THE RESPONDENT HAS ESTABLISHED BASES IN CORNWALL, KINGSTON AND BELLEVILLE. WHILE EMPLOYEES ARE "BASED" IN ONE OR THE OTHER OF THE ABOVE NAMED CITIES THEY ARE TEMPORARILY MOVED FROM TIME TO TIME TO OTHER LOCALITIES IN THE EASTERN REGION AS THEIR SKILLS ARE REQUIRED. ON OCCASION EMPLOYEES "BASED" IN THE EASTERN REGION ARE ALSO TEMPORARILY TRANSFERRED TO LOCALITIES IN THE RESPONDENT'S WESTERN DIVISION, THE HEADQUARTERS OF WHICH ARE IN TORONTO. THE WESTERN DIVISION, HOWEVER, UNLIKE THE EASTERN DIVISION, HAS NO "BASES" AS SUCH OUTSIDE OF TORONTO.

6. THE EASTERN DIVISION ACCORDING TO THE EVIDENCE ENCOMPASSES ALL OF EASTERN CANADA ON A LINE RUNNING NORTH AND SOUTH FROM ONTARIO HIGHWAYS #14 AND #62. STATED MORE SIMPLY, THE DEMARCATION LINE BETWEEN THE EASTERN AND WESTERN DIVISIONS OF THE RESPONDENT IS AT THE TOWN OF BRIGHTON ON ONTARIO HIGHWAY #2. THAT PART OF ONTARIO EAST OF THE ABOVE DESCRIBED BOUNDARY WAS IDENTIFIED IN EVIDENCE AS FORMING PART OF UNIT #2 REFERRED TO IN THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EXPIRING ON FEBRUARY 25TH, 1968. THIS AGREEMENT ACCORDING TO DONALD NEWTON, THE LABOUR RELATIONS SUPERINTENDENT OF THE RESPONDENT, COVERS ALL OF THE EMPLOYEES OF THE RESPONDENT IN THE EASTERN REGION, WITH THE EXCEPTION OF THOSE OF ITS EMPLOYEES EMPLOYED OUTSIDE OF CANADA AND MORE PARTICULARLY THE RESPONDENT'S OPERATIONS IN THE BAHAMAS.

7. THE EVIDENCE OF GILBERT NORRIS AND JAMES MCFARLANE BOTH OF WHOM ARE EMPLOYEES OF THE RESPONDENT "BASED" IN OTTAWA MAKES IT ABUNDANTLY CLEAR THAT THE EMPLOYEES OF THE RESPONDENT AT OTTAWA HAVE IN THE PAST AND ARE PRESENTLY REPRESENTED BY THE INTERVENER UNDER THE TERMS AND CONDITIONS OF THE ABOVE REFERRED TO CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. MORE SPECIFICALLY, MCFARLANE TESTIFIED THAT HE HAS BEEN A REPRESENTATIVE OF THE INTERVENER IN THE OTTAWA AREA AND THAT HE WAS ON THE INTERVENER'S BARGAINING COMMITTEE DURING THE NEGOTIATIONS FOR THE CURRENT COLLECTIVE AGREEMENT. MOREOVER, HE TESTIFIED THAT HE HAS SOLICITED AND SIGNED INTO MEMBERSHIP IN THE INTERVENER EMPLOYEES "BASED" IN OTTAWA. FURTHER, HIS EVIDENCE IS THAT HE HAS SERVICED THE OTTAWA "BASED" EMPLOYEES AND HAS EVEN PROCESSED GRIEVANCES ON THEIR BEHALF UNDER THE COLLECTIVE AGREEMENT. BOTH NORRIS AND MCFARLANE TESTIFIED THAT THE EMPLOYEES "BASED" IN OTTAWA HAVE VOTED ON THE RATIFICATION OF THE COLLECTIVE AGREEMENTS THAT HAVE BEEN NEGOTIATED BY THE INTERVENER WITH THE RESPONDENT. EACH OF THE "BASES" CAME INTO EXISTENCE AFTER THE CURRENT COLLECTIVE AGREEMENT WAS ENTERED INTO ON FEBRUARY 26TH, 1965.

8. THE APPLICANT SUBMITS THAT THE CERTIFICATE ISSUED BY THE QUEBEC LABOUR RELATIONS BOARD CANNOT COVER EMPLOYEES WHO RESIDE OR WORK IN ONTARIO, SINCE THE BOARD WOULD BE WITHOUT JURISDICTION TO GRANT CERTIFICATION FOR SUCH EMPLOYEES.

WHILE WE AGREE WITH THE APPLICANT'S SUBMISSION THERE IS NOTHING TO PREVENT THE RESPONDENT AND INTERVENER FROM ENTERING INTO A COLLECTIVE AGREEMENT COVERING EMPLOYEES RESIDING AND WORKING IN OTHER PROVINCES AS WELL AS IN THE PROVINCE OF QUEBEC. THIS IS, IN FACT, WHAT THE RESPONDENT AND THE INTERVENER HAVE DONE IN THE INSTANT CASE.

9. THE APPLICANT FURTHER SUBMITS THAT THE RECOGNITION CLAUSE OF THE CURRENT COLLECTIVE AGREEMENT IS CONFINED TO THOSE EMPLOYEES OF THE RESPONDENT WHOSE "BASE POINT" IS IN THE PROVINCE OF QUEBEC. THE APPLICANT ARGUES THAT THE EMPLOYEES OF THE RESPONDENT IN OTTAWA, CORNWALL, KINGSTON AND BELLEVILLE ARE "BASED" IN THOSE CENTRES AND THAT THEY DO NOT HAVE A "BASE POINT" IN THE PROVINCE OF QUEBEC. IN SUPPORT OF THIS POSITION, COUNSEL FOR THE APPLICANT MAKES REFERENCE TO APPENDIX "B" OF THE COLLECTIVE AGREEMENT ENTITLED "WORKING CONDITIONS" IN SUPPORT OF HIS POSITION NOTING THE DISTINCTION MADE THEREIN BETWEEN "BASE" AND "BASE POINT". COUNSEL ALSO MADE REFERENCE TO THE PROVISION IN THE ARBITRATION CLAUSE OF THE COLLECTIVE AGREEMENT WHICH PROVIDES FOR THE APPOINTMENT OF A MEMBER OF THE QUEBEC JUDICIARY AS CHAIRMAN OF BOARDS OF ARBITRATION IN CERTAIN CIRCUMSTANCES. COUNSEL ARGUES THAT THE PROVISION IS IN ACCORD WITH HIS SUBMISSION THAT THE RECOGNITION CLAUSE IS CONFINED TO EMPLOYEES RESIDING AND EMPLOYED IN THE PROVINCE OF QUEBEC.

10. THE REFERENCES TO "BASES" IN VARIOUS PLACES THROUGHOUT THE COLLECTIVE AGREEMENT, WITHOUT TAKING INTO ACCOUNT OTHER CONSIDERATIONS, MIGHT LEAVE ROOM FOR DOUBT AS TO THE SCOPE OF THE COLLECTIVE AGREEMENT. HOWEVER, THE SPECIFIC REFERENCE IN THE RECOGNITION CLAUSE TO THE FACT THAT THE EMPLOYEES COVERED BY THE AGREEMENT FORM UNIT #2 OF THE ASSOCIATION, WHICH WAS IDENTIFIED IN EVIDENCE AS COVERING ONTARIO EAST OF BRIGHTON, IN OUR VIEW, PROVIDES AMPLE CLARIFICATION AS TO THE SCOPE OF THE AGREEMENT. MOREOVER, THE UNDISPUTED EVIDENCE THAT THE EMPLOYEES OF THE RESPONDENT BASED IN EASTERN ONTARIO ARE REPRESENTED BY THE INTERVENER UNDER AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER REMOVES ANY POSSIBLE DOUBTS ABOUT THE POSITION OF THE EMPLOYEES SOUGHT BY THE APPLICANT IN THIS APPLICATION.

11. THE BOARD THEREFORE FINDS THAT THE INSTANT APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE EMPLOYEES CONCERNED ARE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM FEBRUARY 26TH, 1965 TO FEBRUARY 25TH, 1968.

12. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

12748-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)  
V. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. CLAIRSON EMPLOYEES'  
ASSOCIATION (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: R. KOSKIE, H. A. HERRON AND B. McMILLAN FOR THE APPLICANT; W. S. COOK AND V. SIMPSON FOR THE RESPONDENT; AND L. D. SMITH FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 12, 1967.

3. THE RESPONDENT CONTENDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION IT HAD NO EMPLOYEES IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT, THAT IS TO SAY, "ALL EMPLOYEES OF CLAIRSON CONSTRUCTION COMPANY LIMITED, WORKING IN THE COUNTIES OF MIDDLESEX, ELGIN, OXFORD, PERTH, HURON AND BRUCE, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN".

THE RESPONDENT IS THE GENERAL CONTRACTOR ON A SEWER AND WATERMAIN PROJECT IN THE CITY OF LONDON. IT IS CLEAR THAT DURING THE LATTER PART OF 1966 THE RESPONDENT HAD EMPLOYEES WHO WOULD HAVE BEEN INCLUDED AT THAT TIME IN THE BARGAINING UNIT NOW PROPOSED BY THE APPLICANT. THE RESPONDENT'S POSITION IS THAT BEGINNING JANUARY 1, 1967 IT SUBCONTRACTED CERTAIN WORK TO A COMPANY KNOWN AS KANAL CONTRACTING COMPANY AND THAT FROM THAT TIME ON THE EMPLOYEES IN QUESTION WERE EMPLOYED BY THAT COMPANY. FROM JANUARY 1, 1967 UP TO FEBRUARY 14, THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT'S PAYROLL RECORDS DO NOT SHOW ANY EMPLOYEES WORKING IN THE LONDON AREA EXCEPT A FOREMAN-LIAISON MAN, ONE MICHAEL SPADACINI. THE PAYROLL RECORDS OF KANAL CONTRACTING COMPANY FOR FEBRUARY 14, 1967 CONTAIN THE NAMES OF THREE PERSONS WHO, THE APPLICANT SUBMITS, HAD BEEN EMPLOYED BY THE RESPONDENT DURING THE LATTER PART OF 1966 IN THE LONDON AREA AND WHO, IT FURTHER SUBMITS, WERE STILL EMPLOYEES OF THE RESPONDENT ON FEBRUARY 14, 1967.

THE APPLICANT CALLED AS WITNESSES THE THREE EMPLOYEES IN QUESTION. THEIR EVIDENCE IS THAT THEY WERE EMPLOYEES OF THE RESPONDENT ON FEBRUARY 14, 1967. THEY TESTIFIED THAT THEY HAD WORKED FOR CLAIRSON CONSTRUCTION FOR PERIODS RANGING FROM ONE TO TEN YEARS, AND THAT THEY HAD BEEN EMPLOYED ON THE SEWER PROJECT IN LONDON IN THE LATTER PART OF 1966. THEIR FOREMAN OR SUPERINTENDENT ON THE JOB WAS MICHAEL SPADACINI. DURING THIS PERIOD OF TIME THESE EMPLOYEES WERE PAID BY CHEQUES ISSUED BY THE RESPONDENT. AFTER JANUARY 1, 1967 THE THREE MEN WERE PAID IN CASH. THEY WERE NOT TOLD THAT THEY WERE NOW WORKING FOR A COMPANY OTHER THAN THE RESPONDENT UNTIL AFTER FEBRUARY 14, 1967. THE THREE MEN IN QUESTION TESTIFIED FURTHER THAT, ALTHOUGH THEY SIGNED RECEIPTS FOR THEIR PAY (IN CASH), THEY DID NOT NOTICE ANYTHING ON THE RECEIPTS PRIOR TO FEBRUARY 14, WHICH INDICATED TO THEM THAT THEY WERE WORKING FOR ANOTHER COMPANY.

THERE WAS NO CHANGE IN THE FOREMAN AFTER JANUARY 1, 1967. THE EQUIPMENT WHICH THEY OPERATED IN 1966 AND 1967 HAD THE NAME "C.D.C. HOLDINGS, LIMITED" PAINTED ON IT AND ALSO THE RESPONDENT'S NAME. TWO OF THE THREE MEN SIGNED NEW TD-1 FORMS IN JANUARY 1967 BUT THERE IS NO EVIDENCE INDICATING THAT THE NAME OF ANY EMPLOYER APPEARED ON THOSE FORMS. CERTAINLY THE TWO EMPLOYEES DID NOT SEE THE NAME OF KANAL CONTRACTING COMPANY ON THESE FORMS. AS NOTED ABOVE THE THREE MEN FINALLY BECAME AWARE THAT THEY WERE BEING CARRIED ON THE PAYROLL OF KANAL CONTRACTING COMPANY BUT NOT UNTIL AFTER FEBRUARY 14, 1967. THEY HAVE CONTINUED TO WORK ON THE JOB.

NEITHER THE RESPONDENT NOR THE INTERVENER CALLED ANY EVIDENCE FOLLOWING THE TESTIMONY OF THE THREE WITNESSES CALLED BY THE APPLICANT. IN OTHER WORDS, THEIR EVIDENCE HAS NOT BEEN CONTRADICTED.



IN COLDLIST CONSTRUCTION LIMITED (ALSO KNOWN AS LAURELCREST INVESTMENTS AND MARTINWAY INVESTMENTS) BOARD FILE 12089-66-R, THE BOARD IN ITS DECISION DATED OCTOBER 6, 1966 SAID AS FOLLOWS:

BEFORE LEAVING THIS ASPECT OF THE CASE WE WISH TO MAKE IT CLEAR THAT THE COMPLEXITIES OF MODERN BUSINESS ORGANIZATION, INCLUDING NEW AND EFFICIENT ACCOUNTING PRACTICES AND PROCEDURES, DO NOT LESSEN THE NECESSITY OF THE CONTRACTUAL OR CONSENSUAL ELEMENT IN THE EMPLOYER-EMPLOYEE RELATIONSHIP AS DESCRIBED IN CONSIDERABLE DETAIL IN THE LOBLAW CASE. MORE SPECIFICALLY, A SIMPLE BOOK TRANSACTION BY EMPLOYER A WHEREBY AN EMPLOYEE IS TRANSFERRED TO THE WORK FORCE OF EMPLOYER B, OR A DIRECTION BY A FOREMAN OF EMPLOYER A TO AN EMPLOYEE TO REPORT FOR WORK ON THE PROJECT OF EMPLOYER B DO NOT BY THEMSELVES MAKE THE EMPLOYEE IN QUESTION AN EMPLOYEE OF EMPLOYER B FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. SOME OF THE EVIDENCE HEARD IN THIS CASE LEAVES US WITH THE DISTINCT IMPRESSION THAT, FOR EXAMPLE, IN THE CASE OF TRANSFERS, THE CONSENSUAL ELEMENT SO NECESSARY IN THE EMPLOYER-EMPLOYEE RELATIONSHIP IS OVERLOOKED OR FORGOTTEN IN THE DRIVE TO CENTRALIZE ACCOUNTING PROCEDURES.

IT SEEMS TO US THAT THE ABOVE QUOTATION APTLY DESCRIBED WHAT HAS IN FACT OCCURRED IN THIS CASE. WHILE IT MAY WELL BE THAT, HAVING LEARNED OF KANAL CONTRACTING COMPANY AND HAVING CONTINUED ON THE JOB, THE THREE PERSONS MUST NOW BE CONSIDERED EMPLOYEES OF THAT COMPANY, ON FEBRUARY 14 THEY HAD NO KNOWLEDGE THAT THEY WERE CONSIDERED BY KANAL TO BE EMPLOYEES OF THAT COMPANY. AS FAR AS THESE THREE PERSONS WERE CONCERNED, THEY HAD BEEN AND THEY STILL WERE WORKING FOR THE RESPONDENT ON THAT DATE AND THERE WAS NOTHING TO INDICATE ANYTHING TO THE CONTRARY TO THEM. IN THESE CIRCUMSTANCES WE HAVE NO HESITATION IN FINDING THAT ON FEBRUARY 14 1967 C. ENMAN, A. FIEGEHEN AND D. DIETRICH, THE PERSONS IN QUESTION, WERE EMPLOYEES OF THE RESPONDENT, CLAIRSON CONSTRUCTION COMPANY LIMITED. IN THE RESULT, THEREFORE, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE APPLICANT'S REQUEST THAT IT BE PERMITTED TO INTRODUCE NEW EVIDENCE.

4. IN ITS INTERVENTION THE INTERVENER TAKES THE POSITION THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE. THIS MATTER WAS NOT INQUIRED INTO BY THE EXAMINER BECAUSE OF THE OTHER ISSUE. THE INTERVENER IS DIRECTED TO NOTIFY THE BOARD FORTHWITH WHETHER IT INTENDS TO PURSUE THIS ARGUMENT. IT SHOULD PERHAPS BE POINTED OUT TO THE PARTIES THAT, THERE BEING AN INCUMBENT TRADE UNION, THE BOARD WOULD, FOLLOWING ITS NORMAL PRACTICE, ULTIMATELY DIRECT A REPRESENTATION VOTE. IN VIEW OF THE TURN OF EVENTS IN THIS CASE, IT MAY WELL BE THAT SUCH A VOTE COULD NOT BE HELD UNTIL THE RESPONDENT EMPLOYED PERSONS IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE.

12752-66-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 (APPLICANT) v. WHITEY'S WHITE ROSE (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: HARRY SIMON AND ARTHUR KUBE FOR THE APPLICANT,  
AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
H. F. IRWIN: APRIL 3, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION.
2. A QUESTION ARISES HEREIN WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.
3. THE APPLICANT IS A LOCAL CHARTERED BY THE CANADIAN LABOUR CONGRESS. THE FORMAL CHARTER IS DATED DECEMBER 15TH, 1966. THERE WAS FILED WITH THE BOARD, AT THE HEARING, A LETTER FROM THE CANADIAN LABOUR CONGRESS DATED DECEMBER 1ST, 1966, AND READING AS FOLLOWS:-

THIS WILL CONFIRM OUR CONVERSATION OF THIS MORNING THAT THE CANADIAN LABOUR CONGRESS WILL ISSUE A CHARTER TO A GROUP OF WORKERS AT SAULT STE. MARIE, ONTARIO, SUCH CHARTER TO BE KNOWN AS:

GENERAL WORKERS UNION, LOCAL 1644, C L C,  
SAULT STE. MARIE, ONTARIO.

THE CHARTER WILL TAKE EFFECT AS OF THIS DATE  
DECEMBER 1, 1966.

4. THE MEMBERSHIP CARDS FILED BY THE APPLICANT ARE ALL DATED NOVEMBER 24, 1966. EACH IS IN THE FOLLOWING FORM:-

CANADIAN LABOUR CONGRESS  
100 ARGYLE AVE. OTTAWA 4, ONTARIO

APPLICATION FOR MEMBERSHIP

IN CHARTERED LOCAL UNION No. .... DATE.....

I HEREBY APPLY FOR MEMBERSHIP IN THE ABOVE LOCAL UNION CHARTERED (OR TO BE CHARTERED) BY THE CANADIAN LABOUR CONGRESS. IF ACCEPTED AS A MEMBER, I PROMISE TO ABIDE BY THE BY-LAWS OF THE UNION AND THE CONSTITUTION OF THE CONGRESS, AND AUTHORIZE SUCH ORGANIZATION TO BE MY EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE.

ALL CARDS ARE DULY SIGNED AND HAVE WRITTEN IN TO THEM THE LOCAL UNION NUMBER 1644 AND THE DATE.

5. IT WAS URGED BY THE APPLICANT THAT NOT WITHSTANDING THE FACT THAT THE APPLICATIONS ANTE-DATE THE FORMAL CHARTER, THE CARDS SHOULD BE ACCEPTED AS VALID EVIDENCE OF MEMBERSHIP UNDER THE PRINCIPLES LAID DOWN IN THE COCHRANE-DUNLOP HARDWARE LIMITED CASE, 63 C.L.L.C. 1134. THE FACTS IN THIS PRESENT CASE, HOWEVER, DO NOT CORRESPOND WITH THOSE IN THE CASE CITED. IN THE COCHRANE-DUNLOP CASE THERE WAS EVIDENCE BEFORE THE BOARD CLEARLY INDICATING THAT DISCUSSIONS WITH THE CANADIAN LABOUR CONGRESS HAD TAKEN PLACE PRIOR TO THE DATE THE CARDS WERE SIGNED AND THAT IN FACT A LOCAL NUMBER HAD BEEN ASSIGNED BY THE CANADIAN LABOUR CONGRESS AT THAT TIME.

6. IN THIS CASE, ON THE OTHER HAND, IT WOULD APPEAR FROM THE LETTER QUOTED ABOVE THAT CONVERSATIONS WITH RESPECT TO THE ASSIGNMENT OF A LOCAL NUMBER AND THE ISSUE OF A CHARTER DID NOT TAKE PLACE UNTIL DECEMBER 1ST, 1966, WHEREAS THE CARDS HAD BEEN SIGNED, AS NOTED ABOVE, ON NOVEMBER 24TH, 1966. IN THE ABSENCE OF EVIDENCE THAT THE ALLEGED MEMBERS DID SOME OTHER ACT CONSISTENT WITH MEMBERSHIP OR OF SOME MOTION BY THE APPLICANT RECTIFYING THE MEMBERSHIP OF THE PERSONS WHO SIGNED PRIOR TO THE APPLICANT BEING FORMED (SEE M. LOEB LIMITED CASE, O.L.R.B. MONTHLY REPORTS, MAY 1962, P. 69), THE BOARD FINDS THAT THE APPLICATION CARDS SUBMITTED HEREIN DO NOT CONSTITUTE VALID EVIDENCE OF MEMBERSHIP. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES:

APRIL 3, 1967.

I DISSENT FROM THE MAJORITY DECISION.

1. THE APPLICATION CARDS THAT ARE IN QUESTION ARE DATED NOVEMBER 24, 1966. THAT THE CHARTER WOULD BE GRANTED WAS CONFIRMED BY LETTER FROM THE C.L.C. DATED DECEMBER 1ST, 1966. THIS LETTER STATED THE NAME OF THE LOCAL UNION AND THE NUMBER THAT WAS ALLOCATED TO IT BY THE CANADIAN LABOUR CONGRESS. THE LETTER STATED:

"THE CHARTER WILL TAKE EFFECT AS OF THIS DATE, DECEMBER 1, 1966".

THE MEMBERSHIP CARDS REQUIRED THE APPLICANT TO SIGN UNDER STATEMENT BEGINNING:

"I HEREBY APPLY FOR MEMBERSHIP IN THE ABOVE LOCAL UNION. CHARTERED (OR TO BE CHARTERED) BY THE CANADIAN LABOUR CONGRESS. IF ACCEPTED AS A MEMBER, I PROMISE TO ABIDE BY THE BY-LAWS OF THE UNION . . . ."

2. THIS IS A UNIT OF THREE EMPLOYEES, ALL OF WHOM SIGNED APPLICATION CARDS. THESE APPLICATION CARDS BORE THE CHARTER NUMBER. THERE WAS NO EVIDENCE GIVEN THAT THE CHARTER NUMBER WAS WRITTEN ON THE CARDS BEFORE THE CARDS WERE SIGNED, BUT THE BENEFIT OF ANY DOUBT IN THIS MATTER SHOULD EXTEND TO THE APPLICANT BECAUSE OF THE VERY NATURE OF THE LOCAL UNION BEING ESTABLISHED. THE CREDENTIALS OF THE CANADIAN LABOUR CONGRESS ARE WELL ESTABLISHED BEFORE THE BOARD AS ARE THE PRACTICES FOLLOWED IN ESTABLISHING LOCAL UNIONS UNDER THE CONSTITUTION AND BY-LAWS OF THE CANADIAN LABOUR CONGRESS. AT VERY WORST, IF THE CHARTER NUMBER WAS NOT TRANSMITTED BEFORE THE CARDS WERE SIGNED, IT WOULD HAVE BEEN SIMPLY AN OVERSIGHT.

3. THE THREE CARDS DATED NOVEMBER 24 WERE SIGNED BY PERSONS WHOSE NAMES APPEAR TYPED ON THE CHARTER ITSELF. THE DATE APPEARING ON THE CHARTER PROPER IS DECEMBER 15. HOWEVER, THERE IS NO EVIDENCE AS TO WHEN THE THREE APPLICANTS SIGNED THE CHARTER APPLICATION. THIS COULD WELL HAVE BEEN DONE WHEN THESE FIRST CARDS WERE SIGNED.

4. IN CONSIDERING ALL PRACTICAL CIRCUMSTANCES, AND IN VIEW OF THE STATUS REFLECTED ON THESE CARDS BY THE CREDENTIALS AND PRACTICES OF THE CANADIAN LABOUR CONGRESS, I WOULD HAVE CERTIFIED THE LOCAL UNION TO REPRESENT THESE EMPLOYEES.

12771-66-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204  
(APPLICANT) v. TORONTO EAST GENERAL AND ORTHOPAEDIC HOSPITAL (RESPONDENT, v.  
GROUP OF EMPLOYEES (OBJECTORS)).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: M. LEVINSON AND J. NICHOLLS FOR THE APPLICANT,  
T. F. STORIE, E. R. WILLCOCKS AND D. WICKENDEN FOR THE RESPONDENT, AND  
J. E. SHAW FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: APRIL 25, 1967.

. . .

2. THE GROUP OF EMPLOYEES, OBJECTORS, FILED WITH THE BOARD A DOCUMENT  
READING AS FOLLOWS:-

#### STATEMENT OF OBJECTION

THE UNDERSIGNED PERSONS OBJECT TO THE  
APPLICATION OF THE APPLICANT UNION FOR CERTIFICATION  
UPON THE FOLLOWING GROUNDS:

THE APPLICATION WOULD GROUP THE UNDERSIGNED, ALL  
NURSING ASSISTANTS AND REGISTERED NURSING ASSISTANTS,  
WITH ORDERLIES, WARD AIDES, KITCHEN HELP AND CLEANING  
AND MAINTENANCE STAFF, BUT THE UNDERSIGNED ALONE ARE  
EMPLOYED AND CLASSIFIED AS NURSING STAFF, ARE  
SPECIFICALLY DEALT WITHIN AND SUBJECT TO THE  
NURSING ACT, R.S.O. 1960, CHAPTER 265 AND MUST PASS  
REQUIRED EXAMINATIONS. THE UNDERSIGNED HAVE PROFES-  
SIONAL DUTIES UNLIKE THE OTHER MEMBERS OF THE PROPOSED  
UNIT, HAVE NOTHING IN COMMON WITH THEM, AND WHATEVER  
ASSOCIATION THEY HAVE HAD HAVE BEEN ON PROFESSIONAL AND  
NOT INDUSTRIAL LINES. THE APPLICANT UNION IN NO WAY  
PERTAINS TO THE UNDERSIGNEDS' PROFESSION.



3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, STATIONARY ENGINEERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED AFTER SCHOOL AND DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.
5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT FRACTURE ROOM TECHNICIANS, OPERATING ROOM TECHNICIANS AND CASE ROOM TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.
6. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT WARD CLERKS, SPECIAL DIET AND MENU CLERKS AND DIETARY CASHIER ARE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.
7. THE PARTIES SUBMITTED WRITTEN ARGUMENTS UPON THE ISSUES RAISED ON THE STATEMENT OF OBJECTION SET OUT ABOVE, AND WHAT WAS SAID AT THE HEARING BEFORE THE BOARD.
8. THE BOARD HAS GIVEN CAREFUL CONSIDERATION TO THE ARGUMENTS MADE BY COUNSEL FOR THE OBJECTORS IN HIS SUBMISSIONS DATED RESPECTIVELY THE 14TH AND THE 29TH OF MARCH, 1967, AND TO THOSE OF THE APPLICANT'S SOLICITOR IN HIS LETTER DATED THE 27TH OF MARCH, 1967.
9. THE BASIC POSITION OF THE OBJECTORS APPEARS TO BE THAT, ON THE BASIS OF THE TRAINING REQUIRED AND THE SKILLS EXERCISED AND BECAUSE OF THE PROFESSIONAL AURA ATTACHING TO THEM BY VIRTUE OF THE PROVISIONS OF THE NURSES ACT 1961-62, THESE EMPLOYEES HAVE NO COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES IN THE PROPOSED BARGAINING UNIT.
10. IN THEIR FIRST SUBMISSION THE OBJECTORS ALSO STATED "THE APPLICANT IS PRECLUDED FROM INCLUDING AT LEAST THE REGISTERED NURSING ASSISTANTS IN THE PROPOSED BARGAINING UNIT BECAUSE OF THE LEGISLATION AND REGULATIONS WHICH GOVERN THE REGISTERED NURSING ASSISTANTS." IN WHAT FOLLOWS THE FOREGOING, THE OBJECTORS APPEARED TO BE ARGUING THAT BECAUSE THE NURSES ACT 1961-62 GIVES TO THE COUNCIL OF NURSES OF ONTARIO POWER TO MAKE REGULATIONS WITH RESPECT TO THE DISCIPLINARY POWERS OF THE COUNCIL, INCLUDING THE POWER TO SUSPEND OR CANCEL THE REGISTRATION OF THE REGISTERED NURSING ASSISTANTS, THE UNION WOULD THEREBY BE PRECLUDED FROM BARGAINING IN CERTAIN AREAS AND THEREFORE OUGHT NOT TO BE CERTIFIED. LATER, HOWEVER, IN THE SUBMISSION OF MARCH 29TH, 1967, THE OBJECTORS STATE THAT THEY HAVE "NEVER SUBMITTED THAT THE MERE EXISTENCE OF THE NURSES ACT 1961-62 PRECLUDED THE CERTIFICATION OF A UNION TO BARGAIN ON THEIR BEHALF". WE FIND THE TWO POSITIONS DIFFICULT TO

RECONCILE. IN ANY EVENT, WE FIND NO MERIT IN THE POSITION, IF THE OBJECTORS STILL MAINTAIN IT, THAT THE DISCIPLINARY POWERS ASSIGNED TO THE COUNCIL PRECLUDES THE RIGHT TO BARGAIN BETWEEN THESE EMPLOYEES AND THE EMPLOYER HEREIN WITHIN THE WIDE AMBIT OF EMPLOYER-EMPLOYEE RELATIONS LEFT UNTOUCHED BY THE INTERNAL REGULATIONS GOVERNING THE RELATIONSHIP BETWEEN A REGISTERED NURSING ASSISTANT AND THE COUNCIL WITH RESPECT TO THE RULES OF THE PROFESSION, IF IT MAY BE SO DESIGNATED. WE WOULD ADOPT THE REASONING OF THE BOARD EXPRESSED IN THE NATIONAL UNION OF PUBLIC EMPLOYEES AND MUNICIPALITY OF METROPOLITAN TORONTO CASE, 62 C.L.L.C. , 916,256, IN THE FOLLOWING WORDS: "ALTHOUGH IT MAY WELL BE THAT IF THE BOARD ISSUES A CERTIFICATE TO THE APPLICANT IN THE INSTANT APPLICATION THE AREA OF BARGAINING MAY BE CIRCUMSCRIBED BY THE LEGISLATION, THAT CONSIDERATION CANNOT PRECLUDE US FROM CERTIFYING THE APPLICANT, IF THE APPLICANT IS OTHERWISE ENTITLED TO CERTIFICATION". APPLYING THAT REASONING TO THE PRESENT INSTANCE WE CAN FIND NO GROUNDS FOR THE EXCLUSION OF THE REGISTERED NURSING ASSISTANTS FROM THE BARGAINING UNIT BY REASON OF ANY OF THE PROVISIONS OF THE NURSES ACT 1961-62.

11. THE OBJECTORS ALSO ARGUE, AS WE UNDERSTAND IT, THAT THE NURSES ACT 1961-62 AND THE REGULATIONS MADE THEREUNDER, COUPLED WITH THE TRAINING RECEIVED AND THE SKILLS EXERCISED BY THE NURSING ASSISTANTS, GENERALLY CONSTITUTE THEM A CRAFT DISTINGUISHABLE FROM OTHER EMPLOYEES, AND THEREFORE QUALIFIED FOR CERTIFICATION UNDER SECTION 6 (2) OF THE LABOUR RELATIONS ACT. EVEN IF IT BE CONCEDED FOR THE SAKE OF ARGUMENT, AND WITHOUT SO FINDING, THAT THE NURSING ASSISTANTS ARE A GROUP EXERCISING TECHNICAL SKILLS, THERE IS NO HISTORY WHATSOEVER THAT THEY COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES - QUITE THE CONTRARY IS THE CASE IN FACT. THEREFORE SECTION 6 (2) HAS NO APPLICATION.

12. RELATED TO THE FOREGOING, AND REFERRED TO PREVIOUSLY, IS THE CONTENTION OF THE OBJECTORS THAT THEY BE EXCLUDED FROM THE BARGAINING UNIT BECAUSE OF A LACK OF COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES WHO COMPRISE IT. THERE ARE AT LEAST TWO MAIN CONSIDERATIONS MILITATING AGAINST THIS PROPOSAL. THE FIRST IS THE POLICY OF THE BOARD AGAINST FRAGMENTATION OF THE BARGAINING UNIT. THE SECOND IS THAT IT IS THE LONG ESTABLISHED POLICY AND PRACTICE OF THE BOARD TO INCLUDE NURSING ASSISTANTS IN BARGAINING UNITS OF THE TYPE SOUGHT IN THE PRESENT INSTANCE. THERE WOULD APPEAR TO BE NOTHING IN THE CIRCUMSTANCES UNDER REVIEW WHICH WOULD TEND TO PERSUADE THE BOARD TO ALTER SO CONSISTENT AND LONG STANDING A PRACTICE UPON WHICH PARTIES IN SITUATIONS SIMILAR TO THIS HAVE COME TO RELY.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12815-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. FRANK LICARI, DOMINIC LACARI, ANGELO LICARI AND BENNY LICARI CARRYING ON BUSINESS IN PARTNERSHIP AS FRANK LICARI & SONS (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: JEAN GUY DENIS FOR THE APPLICANT,  
AND D. W. SCOTT, J. P. MICHEL AND B. LICARI FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 26, 1967.

1. ON MARCH 13, 1967 THE APPLICANT UNION WAS CERTIFIED BY THE BOARD FOR ALL PLASTERERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT. THE RESPONDENT'S REQUEST FOR A HEARING WAS REFUSED BY THE BOARD WHICH, IN ITS DECISION, NOTED THAT IT WAS OPEN TO ANY PARTY TO REQUEST RECONSIDERATION UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IF IT WAS FELT THAT THE BOARD HAD ERRED IN ANY WAY. THE RESPONDENT MADE SUCH A REQUEST, ALLEGING FRAUD ON THE PART OF THE APPLICANT IN CONNECTION WITH THE EVIDENCE OF MEMBERSHIP FILED IN SUPPORT OF THE APPLICATION. THE BOARD IN ITS DECISION DATED MARCH 28, 1967 ACCDED TO SUCH REQUEST AND A HEARING WAS HELD IN OTTAWA TO AFFORD THE RESPONDENT AN OPPORTUNITY TO ESTABLISH ITS ALLEGATIONS.

2. THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT CONSISTED OF ONE APPLICATION CARD AND RECEIPT AND 7 CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES OF MEMBERSHIP WERE IN THE FOLLOWING FORM:

CERTIFICATE OF MEMBERSHIP.

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNA-  
TIONAL ASSOCIATION LOCAL UNION NO.124,  
OTTAWA - HULL.

I THE UNDERSIGNED HEREBY CERTIFY THAT:

I AM A MEMBER OF LOCAL UNION NO. 124, O. P. & C. M. I. A.

MY MONTHLY DUES OF \_\_\_\_\_ ARE PAID FOR THE  
MONTH OF \_\_\_\_\_ 19 \_\_\_\_\_

I BECAME INITIATED MEMBER ON \_\_\_\_\_

I AM WILLING THAT LOCAL 124, OR THE DISTRICT  
COUNCIL TO WHICH IT MAY BE AFFILIATED OR THE  
OPERATIVE PLASTERERS' AND CEMENT MASONS' INTER-  
NATIONAL UNION, ITS OFFICERS OR ITS COMMITTEE  
MEMBERS MAY AND ARE HEREBY AUTHORIZED TO REPRESENT  
ME AND ACT ON MY BEHALF REGARDING WAGES, HOURS OF  
LABOUR OR ANY CONDITIONS OF EMPLOYMENT.

MEMBER'S NUMBER \_\_\_\_\_

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MEMBER'S SIGNATURE.

DATED AT OTTAWA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 19\_\_\_\_

CHECKED AND CERTIFIED CORRECT BY:

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JEAN-GUY DENIS, BUSINESS  
REPRESENTATIVE.

THE BLANK SPACES ON THE FORM WERE FILLED IN AND THE CERTIFICATES WERE SIGNED BY THE EMPLOYEES IN QUESTION AND BY AN OFFICIAL OF THE UNION IN THE SPACES PROVIDED THEREFOR.

3. IT IS CLEAR FROM THE EVIDENCE THAT WHEN THE EMPLOYEES SIGNED THE CERTIFICATES THE BLANK SPACES ABOVE THE PLACE FOR THEIR SIGNATURES HAD NOT BEEN FILLED IN. MORE SPECIFICALLY, THE AMOUNT OF MONTHLY DUES PAID, THE MONTH AND YEAR PAID, AND THE DATE OF INITIATION WERE NOT COMPLETED WHEN THE EMPLOYEES SIGNED THE CERTIFICATES. THE REASON FOR THIS, ACCORDING TO THE OFFICIAL WHO SIGNED THE CERTIFICATES, WAS THAT HE WANTED TO BE CERTAIN THAT THE INFORMATION IN THE CERTIFICATES WAS CORRECT AND HE COULD NOT BE CERTAIN UNTIL THE INTERNATIONAL HEADQUARTERS OF THE APPLICANT HAD PROVIDED HIM WITH THE INFORMATION.

4. WHILE DOUBTLESS THIS IS A LAUDABLE MOTIVE ON THE PART OF THE OFFICIAL IN QUESTION, IT COMPLETELY OVERLOOKS THE NATURE OF THE CERTIFICATE OF MEMBERSHIP AND THE REQUIREMENTS OF THE BOARD WITH RESPECT TO THIS FORM OF MEMBERSHIP EVIDENCE. CERTIFICATES OF THIS KIND ARE USED BY SOME UNIONS IN APPLICATIONS TO THE BOARD IN THE PLACE OF DUES BOOKS WHICH ARE REGARDED BY THE BOARD AS THE BEST PROOF OF MEMBERSHIP IN A UNION. HOWEVER, THE SURRENDER OF DUES BOOKS BY AN EMPLOYEE IS SOMETIMES A HARDSHIP AND FOR THIS REASON THE BOARD HAS ACCEPTED, INSTEAD, CERTIFICATES OF MEMBERSHIP. AMONG OTHER THINGS THESE CERTIFICATES MUST CONTAIN STATEMENTS BY THE EMPLOYEE THAT HE IS A MEMBER OF THE UNION AND THE MONTH AND YEAR FOR WHICH HIS DUES ARE PAID. THESE STATEMENTS BY THE EMPLOYEE MUST BE CERTIFIED BY AN OFFICER OF THE UNION WHO IS IN A POSITION TO DO SO. THERE IS THUS A TWOFOLD REQUIREMENT AND IN THIS CASE THE FIRST REQUIREMENT, THE STATEMENT BY THE EMPLOYEE, HAS NOT BEEN MET. WHAT PERHAPS IS EVEN MORE SERIOUS IS THAT THE BOARD WAS LED TO BELIEVE THAT THE EMPLOYEES IN QUESTION WERE IN FACT MAKING THE REQUIRED STATEMENT WHICH OF COURSE WAS NOT THE CASE. IN THESE CIRCUMSTANCES WE HAVE NO HESITATION IN REJECTING OUTRIGHT THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT.

5. WHILE THIS OBVIOUSLY DISPOSES OF THE CASE AND THERE IS THUS NO NEED TO DEAL IN DETAIL WITH OTHER EVIDENCE HEARD RESPECTING THE MEMBERSHIP EVIDENCE FILED IN SUPPORT OF THE APPLICATION, IT BECAME OBVIOUS DURING THE COURSE OF THE HEARING THAT THE OFFICIAL OF THE UNION INVOLVED IN THIS CASE MISUNDERSTOOD THE NATURE OF THE REQUIREMENTS OF THE BOARD RESPECTING MEMBERSHIP EVIDENCE FILED WITH IT. LET US MAKE IT CLEAR AT THE OUTSET THAT WE ARE NOT IMPUTING MALA FIDES ON THE PART OF THE OFFICIAL IN QUESTION. WE ACCEPT HIS STATEMENT THAT HE ACTED IN GOOD FAITH AND IN THE HONEST BELIEF THAT HE WAS NOT MISLEADING THE BOARD. WE CAN APPRECIATE THAT HE BELIEVED HE HAD A PROBLEM BECAUSE OF THE REQUIREMENTS OF THE PARENT UNION. ON THE OTHER HAND, THERE IS NO DOUBT



THAT THE EVIDENCE FILED DID IN FACT MISLEAD THE BOARD BECAUSE FROM THE BOARD'S POINT OF VIEW THE STATEMENTS CONTAINED IN THE CERTIFICATES THAT MONTHLY DUES WERE PAID FOR A SPECIFIC MONTH AND THAT THE PERSONS CONCERNED HAD BEEN INITIATED ON SPECIFIC DATES WERE NOT IN FACT TRUE.

6. ON APPLICATIONS FOR CERTIFICATION, THE EVIDENCE OF MEMBERSHIP FILED IN SUPPORT OF THE APPLICATION MAY TAKE ONE OF TWO FORMS, EITHER OF WHICH MEETS THE BOARD'S REQUIREMENTS. THE FIRST CONSISTS OF APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT UNION TOGETHER WITH PROOF THAT THE APPLICANT HAS PAID AT LEAST ONE DOLLAR TO THE UNION. THE SAD PART OF THIS CASE IS THAT THE APPLICANT COULD EASILY HAVE MET THIS REQUIREMENT IF IT HAD USED DIFFERENT DOCUMENTS TO SUPPORT ITS POSITION. HOWEVER, EVEN THE ONE APPLICATION AND RECEIPT FILED BY THE APPLICANT WAS MISLEADING. ONE OF THE REQUIREMENTS OF THE BOARD IS THAT THE APPLICATION CARD BE SIGNED AND THE MONEY BE PAID WITHIN CERTAIN TIME LIMITS IN RELATION TO THE DATE OF THE APPLICATION. IT IS THEREFORE IMPORTANT THAT THE DATE ON THE CARD AND THE RECEIPT BE ACCURATE BECAUSE THIS DATE IS USED BY THE BOARD IN DETERMINING WHETHER THE REQUIREMENTS AS TO TIME HAVE BEEN MET. THE DATE ON THE CARD FILED IN THIS CASE WAS MISLEADING BECAUSE ALTHOUGH IT WAS THE DATE THE CARD WAS SIGNED, IT WAS NOT THE DATE ON WHICH THE MONEY WAS PAID. THAT HAD OCCURRED SOME MONTHS PREVIOUSLY.

7. THE SECOND FORM OF MEMBERSHIP EVIDENCE CONSISTS OF DOCUMENTARY EVIDENCE THAT THE PERSONS CONCERNED ARE IN FACT MEMBERS OF THE APPLICANT UNION. THIS FORM USUALLY CONSISTS OF CERTIFICATES OF MEMBERSHIP OR DUES BOOKS AND IS USED WHERE THE EMPLOYEES IN QUESTION ARE MEMBERS AND THERE IS NO NEED TO SIGN THEM UP AGAIN FOR PURPOSES OF THE APPLICATION. DUES BOOKS WILL ACCURATELY REFLECT THE EXACT STATUS OF THE MEMBER. CERTIFICATES OF MEMBERSHIP ARE INTENDED TO ACCOMPLISH THE SAME PURPOSE AND IT IS IMPORTANT THAT THE STATEMENTS CONTAINED THEREIN BE ACCURATE IN ALL RESPECTS. IF THEY CONTAIN A STATEMENT THAT THE PERSON WAS INITIATED ON A SPECIFIC DATE, THAT PERSON MUST HAVE BEEN IN FACT SO INITIATED. IF THEY CERTIFY THAT MONTHLY DUES HAVE BEEN PAID, THESE DUES MUST HAVE IN FACT BEEN PAID AND NOT, AS IN THIS CASE, AN INITIATION FEE ONLY AND THIS SOME MONTHS PRIOR TO THE MONTH FOR WHICH IT IS ASSERTED THAT DUES HAVE BEEN PAID. AS HAS BEEN POINTED OUT IN MANY DECISIONS, THE BOARD IS DEPENDENT TO A LARGE EXTENT ON THE DOCUMENTARY EVIDENCE FILED BY THE UNION BECAUSE IT WOULD BE AN IMPOSSIBLE TASK FOR IT TO VERIFY THE MEMBERSHIP EVIDENCE FOR EVERY INDIVIDUAL BY CONDUCTING A PERSONAL INQUIRY. IT IS INCUMBENT, THEREFORE, UPON UNIONS TO BE MOST CIRCUMSPECT WITH THE DOCUMENTARY EVIDENCE THEY FILE AND TO MAKE SURE THAT IT IS ACCURATE IN ALL RESPECTS. IN THE CASE OF THE PRESENT APPLICANT, IT WILL NOW HAVE TO RE-EXAMINE ITS USE OF CERTIFICATES OF MEMBERSHIP IN THE LIGHT OF THE ABOVE CONSIDERATIONS AND ITS OWN PRACTICES AND PROCEDURES.

8. IN THE RESULT, THEREFORE, THE DECISION OF THE BOARD DATED MARCH 13, 1967 AND THE CERTIFICATE ISSUED TO THE APPLICANT ON THE SAME DATE ARE REVOKED. THE APPLICANT IS DIRECTED TO RETURN TO THE BOARD FORTHWITH THE CERTIFICATE IN QUESTION, AND THE RESPONDENT IS DIRECTED TO RETURN ITS COPY OF THE SAID CERTIFICATE.

9. THE APPLICATION IS DISMISSED.

12827-66-R: CANADIAN ELECTRICAL TRADE UNION (APPLICANT) v. E. FRITZ ELECTRIC LIMITED (RESPONDENT) v. LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: G. CHARNEY, W. MORRISON AND A. PEERS FOR THE  
APPLICANT, R. D. PERKINS AND E. F. FRITZ FOR THE RESPONDENT, K. G. ROSE  
AND R. FRASER FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 24, 1967.

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3. THE EVIDENCE IS THAT THE APPLICANT HAS NOT ENTERED INTO ANY COLLECTIVE AGREEMENTS PERTAINING TO THE CONSTRUCTION INDUSTRY, OR FOR THAT MATTER, ANY COLLECTIVE AGREEMENTS. FOR THE REASONS SET OUT IN THE DECISION OF THE BOARD IN THE BEN BRUINSMA AND SONS LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, P. 647, THE BOARD FINDS THAT THIS IS NOT AN APPLICATION FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT.

4. AT THE BOARD HEARING ON MARCH 23RD, ON THE BASIS OF THE EVIDENCE BEFORE IT, THE BOARD FOUND THAT THE INTERVENER HAD ABANDONED ANY BARGAINING RIGHTS IT HAD HELD FOR EMPLOYEES OF THE RESPONDENT ARISING OUT OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WITH EXPIRY DATE OF JUNE 1ST, 1958.

5. ON MARCH 8TH, 1967, THE RESPONDENT AND THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT WITH AN EXPIRY DATE OF JUNE 30TH, 1969. THIS AGREEMENT PURPORTS TO COVER EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION IN THE INSTANT APPLICATION. THE EVIDENCE IS, HOWEVER, THAT AT THE TIME THE RESPONDENT AND THE INTERVENER EXECUTED THE ABOVE AGREEMENT THEY WERE BOTH AWARE OF THE FACT THAT THE APPLICANT HAD BEEN CONDUCTING AN ORGANIZING CAMPAIGN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE IMMEDIATE PRIOR PERIOD. MOREOVER, ON MARCH 6TH, 1967, THE RESPONDENT WAS INFORMED BY THE APPLICANT THAT IT WAS ABOUT TO FILE THE INSTANT APPLICATION FOR CERTIFICATION. NEVERTHELESS, DESPITE THIS KNOWLEDGE, THE RESPONDENT ENTERED INTO A COLLECTIVE AGREEMENT WITH THE INTERVENER.

6. IN THESE CIRCUMSTANCES, IF THE BOARD WERE TO SANCTION THE AGREEMENT ENTERED INTO BY THE RESPONDENT AND THE INTERVENER IT WOULD, IN EFFECT, BE GIVING ITS APPROVAL TO A PRACTICE OF ALLOWING AN EMPLOYER TO SELECT A BARGAINING AGENT FOR HIS EMPLOYEES. IT HARDLY NEED BE STATED THAT A FUNDAMENTAL PRINCIPLE OF COLLECTIVE BARGAINING UPON WHICH THE LABOUR RELATIONS ACT IS BASED IS THAT THE CHOICE OF A BARGAINING AGENT TO REPRESENT EMPLOYEES IS ONE TO BE MADE BY THE EMPLOYEES THEMSELVES. IT OBVIOUSLY WOULD UNDERMINE THE WHOLE MEANING AND PURPOSE OF COLLECTIVE BARGAINING IF AN EMPLOYER WERE PERMITTED TO SELECT A BARGAINING AGENT ON BEHALF OF HIS EMPLOYEES. THE BOARD ACCORDINGLY FINDS THAT THE COLLECTIVE AGREEMENT ENTERED INTO BY THE RESPONDENT WAS VOID AT ITS INCEPTION AND DOES NOT CONSTITUTE A BAR TO THE INSTANT APPLICATION.

7. IN VIEW OF THE BOARD'S FINDING IN THE ABOVE PARAGRAPH, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION AS TO WHETHER AT THE TIME THE RESPONDENT AND THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT ON MARCH 8TH, 1967, THE INTERVENER WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT COVERED BY THE AGREEMENT.

8. HAVING REGARD TO THE NATURE OF THE RESPONDENT'S ELECTRICAL CONTRACTING OPERATIONS, THE BOARD FINDS THAT ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12847-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT)  
V. HUMPTY-DUMPTY POTATO CHIP DIVISION OF SUNSHINE BISCUITS (CANADA) LIMITED  
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: H. BUCHANAN FOR THE APPLICANT,  
R. ROBERT EASTON FOR THE RESPONDENT, AND NO ONE APPEARING  
FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: APRIL 11, 1967.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT SALES STAFF INCLUDES ROUTE SALESMEN, WHO ARE THUS EXCLUDED FROM THE BARGAINING UNIT. THE BOARD FURTHER DECLARES THAT VAN DRIVERS ARE INCLUDED IN THE BARGAINING UNIT.

5. THERE WERE FILED WITH THE BOARD A NUMBER OF "PETITIONS" IN OPPOSITION TO THE APPLICATION. THESE DOCUMENTS WERE PREPARED BY THE MANAGEMENT OF THE RESPONDENT AND WERE CIRCULATED AMONG EMPLOYEES OF THE RESPONDENT BY MEMBERS OF MANAGEMENT, WHO CALLED UPON EMPLOYEES AT THEIR HOMES AND SOLICITED THEIR SIGNATURES TO THE "PETITIONS". HAVING REGARD TO THESE CIRCUMSTANCES, WE COULD NOT CONCLUDE THAT THESE "PETITIONS" CAST DOUBT ON ANY OF THE EVIDENCE

OF MEMBERSHIP FILED BY THE APPLICANT. THIS EVIDENCE IT MAY BE SAID, COMPLIES WITH THE BOARD'S REQUIREMENTS, AND HAS BEEN SUBJECTED TO THE USUAL SCRUTINY.

6. IT MAY BE ADDED THAT OUR DETERMINATION WITH RESPECT TO THE WEIGHT TO BE GIVEN THE "PETITIONS" IN THIS CASE CARRIES NO IMPLICATION WITH RESPECT TO THE PROPRIETY OF THE RESPONDENT'S CONDUCT, WHICH WAS UNDERTAKEN UNDER THE INSTRUCTIONS OF COUNSEL. NO ALLEGATIONS HAVE BEEN MADE BY THE APPLICANT AND THERE IS NO ISSUE BEFORE THE BOARD IN THIS CONNECTION.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12874-66-R: NURSES' ASSOCIATION YORK COUNTY HEALTH UNIT (APPLICANT) v. THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. W. FORGIE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: D. F. O. HERSEY, MISS L. JOHNSON AND L. SHARP FOR THE APPLICANT, W. S. COOK, S. T. RUMBLE AND DR. B. C. LE PAGE FOR THE RESPONDENT, F. L. TAYLOR AND C. F. KITCHEN FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 28, 1967.

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3. THE APPLICANT, ON MARCH 16TH, 1967, APPLIED FOR A UNIT CONSISTING OF ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT. THE RESPONDENT, HOWEVER, HAS SUGGESTED THAT THE BARGAINING UNIT INCLUDE REGISTERED NURSING ASSISTANTS. THE CANADIAN UNION OF PUBLIC EMPLOYEES APPLIED ON JANUARY 17TH, 1967 FOR A UNIT OF EMPLOYEES INCLUDING REGISTERED NURSING ASSISTANTS AND THAT APPLICATION WAS HEARD AT THE SAME TIME AS THE INSTANT APPLICATION WAS HEARD BY THE BOARD.

4. THE RESPONDENT ARGUED THAT THE REGISTERED NURSING ASSISTANTS SHARED A GREATER COMMUNITY OF INTEREST WITH THE REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT THAN WITH ANY OTHER CLASSIFICATION OF EMPLOYEES, AND, ACCORDINGLY, TOOK THE POSITION THAT THE BARGAINING UNIT APPLIED FOR BY THE APPLICANT SHOULD INCLUDE THE REGISTERED NURSING ASSISTANTS. THE APPLICANT, HOWEVER, REFERRED THE BOARD TO THE NINE PREVIOUS APPLICATIONS WHEREIN NURSES' ASSOCIATIONS WERE CERTIFIED AS BARGAINING AGENTS FOR ALL REGISTERED AND GRADUATE NURSES.

5. ARTICLE III OF THE APPLICANT'S CONSTITUTION READS AS FOLLOWS:



MEMBERSHIP IS OPEN TO ALL REGISTERED AND GRADUATE NURSES WHO ARE EMPLOYED BY THE EMPLOYER ON A FULL-TIME OR ON A PART-TIME BASIS, EXCEPT THOSE IN A MANAGERIAL CAPACITY.

6. THE APPLICANT STATED THAT IT ORGANIZED ITSELF TO REPRESENT REGISTERED AND GRADUATE NURSES ONLY, HAVING REGARD TO THE BOARD'S HISTORY OF EXCLUDING THESE CLASSIFICATIONS FROM BARGAINING UNITS. IN ADDITION, THE APPLICANT DID NOT CONSIDER TAKING INTO MEMBERSHIP REGISTERED NURSING ASSISTANTS BECAUSE OF THE BOARD'S HISTORY OF INCLUDING REGISTERED NURSING ASSISTANTS IN BARGAINING UNITS WITH OTHER EMPLOYEES. IT IS TO BE NOTED THAT THE USUAL HOSPITAL BARGAINING UNIT INCLUDES REGISTERED NURSING ASSISTANTS BUT EXCLUDES NURSES.

7. IF THE BOARD WERE TO ACCEDE TO THE RESPONDENT'S REQUEST IN THIS CASE THE BOARD WOULD HAVE TO FIND THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES, WHICH SEEKS TO REPRESENT REGISTERED NURSING ASSISTANTS AND HAS A HISTORY OF REPRESENTING THEM, IS NO LONGER ENTITLED TO DO SO, AND, IN ADDITION, IF THE BOARD AGREED WITH THE RESPONDENT'S POSITION THE BOARD WOULD HAVE TO FIND THAT THE APPLICANT IN THE INSTANT CASE WOULD BE COMPELLED TO REPRESENT REGISTERED NURSING ASSISTANTS EVEN THOUGH IT DOES NOT DESIRE TO DO SO AND ITS CONSTITUTION DOES NOT PROVIDE FOR THEIR ADMITTANCE TO MEMBERSHIP.

8. HAVING REGARD TO THE FACT THAT THE APPLICANT'S CONSTITUTION WAS PREPARED IN LIGHT OF THE BOARD'S PRACTICE OF INCLUDING REGISTERED NURSING ASSISTANTS IN BARGAINING UNITS WITH OTHER EMPLOYEES, AND THE FACT THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES HAS A LONG HISTORY OF REPRESENTING THAT CLASSIFICATION, THE BOARD IS NOT PREPARED IN THIS CASE TO COMPEL THE APPLICANT TO TAKE REGISTERED NURSING ASSISTANTS INTO MEMBERSHIP. WHILE IT MAY BE THAT IF THE BOARD WERE FACED FOR THE FIRST TIME WITH THE PROBLEM OF DETERMINING THE APPROPRIATE BARGAINING UNIT FOR REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS, IT MIGHT WELL DECIDE THAT EMPLOYEES WHO ARE CONCERNED WITH DIRECT PATIENT CARE WOULD SHARE A COMMUNITY OF INTEREST WHICH WOULD ENTITLE THEM TO BE BARGAINED FOR IN THE SAME BARGAINING UNIT. MOREOVER, IT MUST BE RECOGNIZED THAT IN ADDITION TO NURSES AND REGISTERED NURSING ASSISTANTS THERE ARE OTHER EMPLOYEES CONCERNED WITH DIRECT PATIENT CARE SUCH AS ORDERLIES, NURSING ASSISTANTS WHO ARE NOT REGISTERED, AND OTHER CLASSIFICATIONS. HOWEVER, THE BOARD IS NOT PREPARED TO DISREGARD ITS LONG HISTORY OF INCLUDING REGISTERED NURSING ASSISTANTS IN BARGAINING UNITS WITH OTHER EMPLOYEES AND APART FROM ANY OTHER CONSIDERATION, THIS HISTORY OF BARGAINING HAS DEVELOPED THE COMMUNITY OF INTEREST WHICH EXISTED BETWEEN THE REGISTERED NURSING ASSISTANTS AND OTHER HOSPITAL EMPLOYEES. IN ADDITION, THE BOARD IS NOT PREPARED TO FIND, ON THE EVIDENCE OF THIS CASE, THAT THE REGISTERED NURSING ASSISTANTS' FUNCTIONS ARE SUBSTANTIALLY DIFFERENT FROM THE FUNCTIONS PERFORMED BY THEM IN A HOSPITAL, AND, ACCORDINGLY, THE COMMUNITY OF INTEREST OF THE REGISTERED NURSING ASSISTANTS IN THIS CASE MUST BE DETERMINED HAVING REGARD TO THE LONG HISTORY OF THEIR INCLUSION IN "ALL EMPLOYEE" BARGAINING UNITS FOR HOSPITALS, AND THE HISTORY OF REPRESENTATION OF REGISTERED NURSING ASSISTANTS BY THE CANADIAN UNION OF PUBLIC EMPLOYEES IN SUCH "ALL EMPLOYEE" BARGAINING UNITS.

9. THE BOARD THEREFORE FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12875-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. REGAL ARC LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: D. M. STOREY AND F. RAO FOR THE APPLICANT,  
NO ONE FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFFE: APRIL 18, 1967.

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2. THE APPLICANT IS APPLYING TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES CONSISTING OF ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. THE RESPONDENT IN ITS REPLY AGREES THAT THE UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE FOR COLLECTIVE BARGAINING, BUT REQUESTS ALSO THE EXCLUSION OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. THE PRACTICE OF THE BOARD IS TO EXCLUDE THIS CATEGORY OF EMPLOYEES FROM A BARGAINING UNIT OF FULL-TIME EMPLOYEES WHEN SUCH A REQUEST IS MADE BY EITHER THE APPLICANT OR THE RESPONDENT, WHERE THE RESPONDENT HAS STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ON THE DATE OF APPLICATION OR WHERE THERE IS EVIDENCE THAT THE RESPONDENT HAS A HISTORY OF EMPLOYING STUDENTS DURING THE SCHOOL VACATION PERIOD.

3. AT THE BOARD HEARING IN THE INSTANT CASE, NO ONE APPEARED TO REPRESENT THE RESPONDENT. THE BOARD ACCORDINGLY ENQUIRED OF THE REPRESENTATIVE OF THE APPLICANT, BEING THE ONLY PARTY REPRESENTED AT THE HEARING, WHETHER THE RESPONDENT HAD A HISTORY OF EMPLOYING STUDENTS DURING THE SCHOOL VACATION PERIOD. THE REPRESENTATIVE OF THE APPLICANT STATED UNEQUIVOCALLY THAT THE RESPONDENT DID NOT HAVE A HISTORY OF EMPLOYING THIS CATEGORY OF EMPLOYEES.

4. WE HAVE HAD AN OPPORTUNITY OF READING THE DISSENTING OPINION OF BOARD MEMBER H. F. IRWIN IN WHICH HE EXPRESSES THE VIEW, THAT IN THE CIRCUMSTANCES OF THE INSTANT CASE THE BOARD SHOULD APPOINT AN EXAMINER TO ENQUIRE OF THE RESPONDENT WHETHER IT HAS A HISTORY OF EMPLOYING STUDENTS DURING THE SCHOOL VACATION PERIOD BEFORE THE BOARD MAKES A DETERMINATION AS TO THE APPROPRIATE BARGAINING UNIT. WE WOULD COMMENT ON THIS VIEW.

5. THE PURPOSE IN HOLDING HEARINGS IN THE VARIETY OF PROCEEDINGS THAT COME BEFORE THIS BOARD FOR DETERMINATION IS TO ALLOW THE PARTIES TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS IN SUPPORT OF THEIR RESPECTIVE POSITIONS ON ALL MATTERS

RELATING TO THEIR PARTICULAR PROCEEDING. IN APPLICATIONS FOR CERTIFICATION, AT THE HEARING, THE BOARD RELIES ON THE PARTIES TO ADDUCE EVIDENCE OR OTHERWISE ADVISE THE BOARD OF THOSE FACTS OR CIRCUMSTANCES WHICH MAY ASSIST THE BOARD IN MAKING ITS DETERMINATION AS TO THE APPROPRIATE BARGAINING UNIT. BASED ON THE INFORMATION PROVIDED AT THE HEARING AND HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD DETERMINES THE BARGAINING UNIT WHICH IT DEEMS TO BE APPROPRIATE.

6. IF THE APPLICANT IN A CERTIFICATION PROCEEDING FAILS TO BE REPRESENTED AT THE HEARING, THE BOARD INVARIABLY DISMISSES THE APPLICATION. IF THE RESPONDENT FAILS TO BE REPRESENTED AT THE HEARING, IT MUST BE ASSUMED THAT IT HAS DONE SO WITH FULL KNOWLEDGE THAT THE BOARD WILL, AND CANNOT DO OTHERWISE, THAN TO MAKE ITS DECISION ON THE BASIS OF THE EVIDENCE BEFORE IT. IT MAY BE THAT THE RESPONDENT HAD EVIDENCE OR INFORMATION AVAILABLE TO IT WHICH, IF IT HAD BEEN BROUGHT TO THE BOARD'S ATTENTION, WOULD HAVE CAUSED THE BOARD TO MAKE A DIFFERENT DECISION. BY NOT APPEARING AT THE HEARING AND PRESENTING SUCH EVIDENCE OR INFORMATION, THE RESPONDENT RUNS THE RISK OF THE BOARD MAKING A DETERMINATION WHICH IS UNFAVOURABLE TO ITS INTERESTS, A CONSEQUENCE, HOWEVER, FOR WHICH IT MUST ACCEPT FULL RESPONSIBILITY.

7. IN THE INSTANT CASE, THE UNDISPUTED REPRESENTATION OF FACT MADE BY THE REPRESENTATIVE OF THE APPLICANT, WHICH THE BOARD MUST ACCEPT AS EVIDENCE, IS THAT THE RESPONDENT HAS NO HISTORY OF EMPLOYING STUDENTS DURING THE SCHOOL VACATION PERIOD. FOR THE BOARD NOW TO MAKE INQUIRIES OF THE RESPONDENT, WHO FAILED TO ATTEND THE HEARING, WOULD BE TO DEFEAT THE WHOLE PURPOSE OF THE HEARING. ACCORDINGLY, WE CANNOT AGREE WITH THE VIEW EXPRESSED BY BOARD MEMBER IRWIN. WE WOULD ADD, HOWEVER, THAT HAD THE RESPONDENT, EVEN IN ITS REPLY, STATED THAT IT DID NOT HAVE A HISTORY OF EMPLOYING STUDENTS DURING THE SCHOOL VACATION PERIOD, THE BOARD MIGHT HAVE ADOPTED A DIFFERENT POSITION.

8. WE WOULD EMPHASIZE, HOWEVER, THAT WE ARE NOT TO BE UNDERSTOOD AS SAYING THAT IN NO CIRCUMSTANCES, WHEN THE RESPONDENT IS NOT REPRESENTED AT THE HEARING OF A CERTIFICATION APPLICATION, SHOULD THE BOARD SEEK ADDITIONAL INFORMATION SUBSEQUENT TO THE HEARING. IN CIRCUMSTANCES WHERE THE BOARD FINDS THAT IT HAS INSUFFICIENT INFORMATION TO ENABLE IT TO MAKE A NECESSARY DETERMINATION WITH RESPECT TO THE APPLICATION, OR THE REPRESENTATIVE OF THE APPLICANT EXPRESSES UNCERTAINTY AS TO THE RELEVANT FACTS, IT MAY WELL BE THAT FURTHER INQUIRIES SHOULD BE MADE TO SECURE THE NECESSARY INFORMATION SO THAT THE BOARD IS IN A POSITION TO MAKE A DISPOSITION OF THE APPLICATION. THE ABOVE CIRCUMSTANCES DO NOT EXIST IN THE INSTANT CASE.

9. THEREFORE, ON THE BASIS OF THE EVIDENCE BEFORE IT AND THE BOARD'S PRACTICE REGARDING STUDENTS, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

APRIL 18, 1967.

I DISSENT.

ALTHOUGH NOT REPRESENTED AT THE HEARING, THE RESPONDENT EMPLOYER, IN ITS OFFICIAL REPLY IN FORM 10, REQUESTED THE EXCLUSION FROM THE BARGAINING UNIT OF STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD. THE APPLICANT UNION STATED TO THE BOARD THAT THE RESPONDENT DID NOT HAVE A PAST PRACTICE OF HIRING SUCH STUDENTS. I AM SURE THIS STATEMENT WAS MADE IN GOOD FAITH AND WAS BASED ON THE INFORMATION AVAILABLE TO THE UNION AT THE TIME. HOWEVER, IN MY OPINION, ONLY THE RESPONDENT EMPLOYER CAN SPEAK AUTHORITATIVELY IN RESPECT OF THIS PRACTICE AND IT IS NOT UNREASONABLE TO PRESUME THAT THE EXISTENCE OF A PAST PRACTICE INITIATED THE RESPONDENT'S REQUEST THAT STUDENTS BE EXCLUDED FROM THE BARGAINING UNIT.

IN THE CIRCUMSTANCES, I WOULD HAVE APPOINTED AN EXAMINER AND DIRECTED HIM TO ENQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY AS TO WHETHER OR NOT THE RESPONDENT HAS A PAST PRACTICE OF EMPLOYING STUDENTS FOR THE SCHOOL VACATION PERIOD. ON THE BASIS OF THE EXAMINER'S REPORT, I WOULD HAVE DISPOSED OF THE MATTER STRICTLY IN ACCORDANCE WITH EXISTING BOARD POLICY, I.E., IF A PAST PRACTICE EXISTED, THE SAID STUDENTS WOULD BE EXCLUDED AND, IF NO PAST PRACTICE EXISTED, THE STUDENTS WOULD BE INCLUDED IN THE BARGAINING UNIT.

THE BOARD MUST BE SATISFIED AS TO WHETHER OR NOT THE RESPONDENT HAS A PAST PRACTICE OF EMPLOYING SUCH STUDENTS. I AM NOT SATISFIED THAT THE APPLICANT UNION POSSESSES, NOR WOULD I EXPECT IT TO POSSESS, THE INFORMATION REQUIRED TO ENABLE IT TO SPEAK AUTHORITATIVELY IN RESPECT OF THIS PRACTICE. FOR THIS REASON, I WOULD HAVE APPOINTED AN EXAMINER TO MAKE AN ENQUIRY AND REPORT TO THE BOARD ON THIS MATTER.

NOWHERE IN THE BOARD'S RULES OF PROCEDURE AND REGULATIONS IS IT STATED THAT SUCH INFORMATION IS REQUIRED TO BE FILED BY THE RESPONDENT. CONSEQUENTLY, I AM SHOCKED THAT THE BOARD HAS REFUSED MY REQUEST TO APPOINT AN EXAMINER AND OBTAIN ALL THE FACTS BEFORE MAKING A DETERMINATION ON THE INCLUSION OR EXCLUSION OF THE SAID STUDENTS FROM THE BARGAINING UNIT.

THE MAJORITY DECISION I DISSENTED FROM WAS A SHORT STANDARD ENDORSEMENT WITHOUT ANY COMMENT WHATSOEVER CONCERNING THE EXCLUSION OR INCLUSION OF STUDENTS FROM THE BARGAINING UNIT. AS A RESULT OF MY DISSENT, THE MAJORITY DECISION HAS BEEN REWRITTEN AS ABOVE. THIS IS VERY REWARDING BECAUSE IT MEANS THAT MY DISSENT HAS ALREADY COMMENCED TO SERVE A USEFUL PURPOSE BY BRINGING TO LIGHT THE POLICY AND PRACTICE THE BOARD INTENDS TO FOLLOW IN CASES OF THIS KIND.

12878-66-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT)  
V. GREENSPOON BROS. LIMITED (RESPONDENT).



BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND R. W. TEAGLE.

APPEARANCES AT HEARING: E. MANCINELLI FOR THE APPLICANT, AND  
B. W. BINNING AND W. GREENSPOON FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 7, 1967.

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3. THE APPLICANT HAS PROPOSED A BARGAINING UNIT DESCRIBED IN TERMS OF "ALL CONSTRUCTION LABOURERS". THESE ARE THE WORDS EMPLOYED BY THE BOARD IN RECENT YEARS TO DESCRIBED BARGAINING UNITS INVOLVING LABOURERS IN THE CONSTRUCTION INDUSTRY.

THE RESPONDENT SUBMITS THAT THE WORD "CONSTRUCTION" SHOULD BE REPLACED BY THE WORD "WRECKING" BECAUSE THE RESPONDENT'S BUSINESS IS THAT OF WRECKING DEMOLITION AND SALVAGE. THE RESPONDENT ALSO SUBMITS THAT THE "FAIR WAGE SCALE" IN THE INDUSTRY DISTINGUISHES BETWEEN LABOURERS ENGAGED IN CONSTRUCTION AND LABOURERS ENGAGED IN WRECKING AND, FURTHER, THAT LABOURERS ENGAGED IN WRECKING ARE SEPARATELY CLASSIFIED FOR PURPOSES OF THE WORKMEN'S COMPENSATION ACT.

IN USING THE WORD "CONSTRUCTION" TO QUALIFY LABOURERS, THE BOARD HAD IN MIND CONSTRUCTION AS USED IN THE LABOUR RELATIONS ACT AND WAS NOT SEEKING TO DISTINGUISH BETWEEN EMPLOYEES ENGAGED IN BUILDING AND EMPLOYEES ENGAGED IN WRECKING OR DEMOLITION. SECTION 1(1)(DA) OF THE ACT PROVIDES AS FOLLOWS:

"CONSTRUCTION INDUSTRY" MEANS THE BUSINESSES THAT ARE ENGAGED IN CONSTRUCTING, ALTERING DECORATING, REPAIRING OR DEMOLISHING BUILDINGS, STRUCTURES, ROADS, SEWERS, WATER OR GAS MAINS, PIPE LINES, TUNNELS, BRIDGES, CANALS OR OTHER WORKS AT THE SITE THEREOF;

THE WORDS "CONSTRUCTION LABOURERS" AS USED BY THE BOARD ARE INTENDED TO EMBRACE EMPLOYEES OF BUSINESSES MAKING UP THE CONSTRUCTION INDUSTRY AS DEFINED ABOVE.

WE ARE NOT DISPOSED TO DEPART FROM THIS GENERAL CONCEPT AND INTRODUCE DIFFERENT CLASSES OF LABOURERS FOR PURPOSES OF CERTIFICATION. TO DO SO IN THIS CASE WOULD IN OUR VIEW ONLY OPEN THE DOOR FOR ARGUMENTS AT A LATER STAGE THAT OTHER CLASSIFICATIONS OF LABOURERS SHOULD BE EMPLOYED BY THE BOARD. PROVIDED THE SENSE IN WHICH THE BOARD USES THE WORD "CONSTRUCTION" IS UNDERSTOOD, WE CAN SEE NO PARTICULAR ADVANTAGES OR DISADVANTAGES TO EITHER LABOUR OR MANAGEMENT IF THE BOARD CONTINUES TO EMPLOY SUCH TERMINOLOGY. IN OTHER WORDS, IF A PARTICULAR LABOURER IS ENGAGED IN DEMOLITION WORK, IT WOULD NOT IN OUR VIEW BE OPEN TO EITHER SIDE TO ARGUE THAT SUCH PERSON IS A CONSTRUCTION LABOURER FOR PURPOSES OF EITHER "THE FAIR WAGE SCALES" OR THE WORKMEN'S COMPENSATION ACT.

4. THE APPLICANT IS PROPOSING THE EXCLUSION OF NON-WORKING FOREMEN WHILE THE RESPONDENT SUBMITS THAT THE EXCLUSION SHOULD BE FOREMEN. IN THIS CASE THERE IS ONE FOREMAN ON THE JOB AND HE APPARENTLY WORKS FROM TIME TO TIME. THE APPLICANT AGREES THAT THIS PARTICULAR FOREMAN SHOULD BE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUND THAT HE EXERCISES MANAGERIAL FUNCTIONS. IN SIMILAR SITUATIONS IT HAS BEEN THE PRACTICE OF THE BOARD TO MAINTAIN THE EXCLUSION OF NON-WORKING FOREMEN AND TO ADD A CLARITY NOTE EXCLUDING THE INDIVIDUAL IN QUESTION. WE SEE NO REASON FOR DEPARTING FROM THAT PRACTICE IN THIS CASE.

5. HAVING REGARD TO THE ABOVE CONSIDERATIONS THE BOARD FINDS FURTHER THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT ALFRED PRIMERANO EXERCISES MANAGERIAL FUNCTIONS AND IS NOT AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER DECLARES THAT THE NIGHT WATCHMAN IS NOT AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12890-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)  
(APPLICANT) v. CANADIAN GENERAL ELECTRIC COMPANY LIMITED, CHEMICAL AND  
METALURGICAL DEPT., PORT UNION PLANT (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND D. W. FORGIE.

APPEARANCES AT HEARING: R. RUSSELL AND ROY SHARPLES FOR THE APPLICANT,  
AND JOSEPH REYNOLDS AND M. S. NOWAK FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 26, 1967.

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2. THIS IS AN APPLICATION FOR CERTIFICATION, WHICH THE RESPONDENT SUBMITS IS PREMATURE BECAUSE THE PRESENT NUMBER OF EMPLOYEES REPRESENTS ONLY A SMALL PORTION OF THE TOTAL NUMBER TO BE EMPLOYED IN A NEW PLANT. THE ERECTION OF THIS PLANT WAS COMPLETED IN JANUARY 1967.

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4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT PORT UNION, IN THE TOWNSHIP OF PICKERING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. AT THE DATE OF THE APPLICATION, MARCH 21ST, 1967, AND OF THE HEARING, APRIL 10TH, 1967, THERE WERE FOUR EMPLOYEES IN THE PLANT, ALL OF WHOM ARE MEMBERS OF THE APPLICANT. THE COMPANY STATED THAT THREE ADDITIONAL EMPLOYEES WOULD BE REQUIRED FOLLOWING THE INSTALLATION OF FURTHER MACHINERY BY APRIL 24TH, 1967. IT EXPECTED TO EMPLOY TWO MORE OPERATORS BY MAY 23RD, 1967. NO FURTHER ADDITIONS TO THE LIST OF EMPLOYEES IS CONTEMPLATED UNTIL SEPTEMBER 1967, WHEN TWO BENCH OPERATORS WILL BE REQUIRED. THERE IS THE POSSIBILITY OF THE ADDITION OF THREE ADDITIONAL OPERATORS AT THE END OF 1967.

6. HAVING REGARD TO THE EVIDENCE WITH RESPECT TO BUILD-UP AND THE PRINCIPLES SET OUT BY THE BOARD IN THE EMIL FRANT AND PETER WASELOVICH CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,057, C.L.S. 76-539, THE BOARD IS SATISFIED THAT THE RESPONDENT HAS A PLANNED PROGRAM FOR INCREASES IN ITS WORK FORCE WITHIN A SPECIFIED AND REASONABLE PERIOD. IN ACCORDANCE WITH ITS USUAL PRACTICE IN SUCH CASES, THE BOARD DIRECTS THAT THE RESPONDENT REPORT TO THE BOARD ON THE NUMBER OF PERSONS IN ITS EMPLOY IN THE BARGAINING UNIT ON MAY 24TH, 1967.

7. IF THE BUILD-UP DOES NOT PROGRESS AS ALLEGED BY THE RESPONDENT WITHIN THE TIME SPECIFIED, THE BOARD WILL CONSIDER THE MEMBERSHIP POSITION OF THE APPLICANT AS OF THE DATE THIS APPLICATION WAS MADE.

12897-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. N. W. CLAYTON SHEET METAL AND HEATING CO. LTD. (RESPONDENT) v. SHEET METAL WORKERS' WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 562 (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: LORNE INGLE FOR THE APPLICANT,  
PATRICK MORRIS AND N. W. CLAYTON FOR THE RESPONDENT, AND  
RONALD S. TAYLOR AND ALBERT MELCHIN FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 17, 1967.

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4. THE INTERVENER CLAIMS TO HOLD BARGAINING RIGHTS FOR A CRAFT UNIT OF EMPLOYEES OF THE RESPONDENT BY VIRTUE OF A COLLECTIVE AGREEMENT MADE BETWEEN THE RESPONDENT AND THE INTERVENER, DATED THE 25TH DAY OF APRIL 1963. ARTICLE 1 OF THE AGREEMENT READS AS FOLLOWS:-

THIS AGREEMENT MADE AND ENTERED INTO BY AND  
BETWEEN THE PARTIES SPECIFIED ABOVE, ESTABLISHES  
BY MUTUAL CONSENT OF BOTH PARTIES, SPECIFIC RULES

AND REGULATIONS TO GOVERN EMPLOYMENT, WAGE SCALE AND WORKING CONDITIONS OF JOURNEYMEN SHEET METAL WORKERS AND REGISTERED APPRENTICES. PARTIES TO AND RECOGNIZED UNDER THIS AGREEMENT.

THE AGREEMENT WAS TO RUN FROM THE 25TH OF APRIL 1963, TO THE 24TH OF APRIL, 1964, AND FROM YEAR TO YEAR THEREAFTER "UNLESS EITHER PARTY GIVES NOTICE TO THE OTHER PARTY OF ITS DESIRE TO TERMINATE OR AMEND THIS AGREEMENT".

5. IT WAS THE POSITION OF THE INTERVENER THAT THE COLLECTIVE AGREEMENT CONSTITUTES A BAR TO THE CERTIFICATION APPLICATION, AT LEAST IN SO FAR AS THE CRAFT MEMBERS OF THE EMPLOYEES ARE CONCERNED, AND THAT IT HAD NOT ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO THESE EMPLOYEES.

6. NO NEW AGREEMENT HAS BEEN NEGOTIATED BETWEEN THE INTERVENER AND THE RESPONDENT SINCE APRIL 24TH, 1964. IN MARCH 1966 THE INTERVENER MAILED THE FOLLOWING LETTER TO THE RESPONDENT:-

I WISH TO INFORM YOU THAT THE ANNIVERSARY TIME OF OUR AGREEMENT IS HERE AGAIN. ARTICLE 14 OF OUR AGREEMENT. I WOULD ALSO REMIND YOU THAT WE HAVE HAD FIVE MEETINGS WITH THE REST OF OUR COMPANIES THAT ARE SIGNED TO OUR AGREEMENT AND WOULD SUGGEST TO YOU AT THIS TIME TO LET ME OUTLINE TO YOU OF WHAT WE HAVE AGREED TO. HOPING TO BE ABLE TO MEET WITH YOU ON THIS MATTER SOMETIME THIS WEEK. WOULD YOU KINDLY LET ME KNOW ON THIS MATTER.

7. THIS LETTER DID NOT BRING ABOUT ANY BARGAINING MEETINGS WITH THE RESPONDENT, BUT DID HAVE THE EFFECT OF PREVENTING THE FURTHER AUTOMATIC RENEWAL OF THE 1963 AGREEMENT, WITH THE RESULT THAT NO COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT HAS BEEN IN EXISTENCE SINCE APRIL OF 1966. THIS ALONE MIGHT NOT BE SIGNIFICANT WERE IT NOT FOR THE FACT THAT THERE APPEARS TO HAVE BEEN LITTLE OR NO ATTEMPT TO ADMINISTER THE AGREEMENT DURING ITS INITIAL TERM, NOR DURING THE PERIOD COVERED BY THE RENEWAL CLAUSE. FURTHERMORE, FROM APRIL 1964 TO MARCH 22ND, 1966, THERE WAS NO REAL EFFORT MADE TO BARGAIN WITH THE RESPONDENT, ALTHOUGH NO IMPEDIMENTS TO SUCH BARGAINING WERE EVIDENT. NO ATTEMPT WAS MADE TO OBTAIN CONCILIATION OR BRING THE MATTER TO A HEAD. THE SAME OBTAINS FOR THE PERIOD FOLLOWING THE NOTICE OF MARCH 22ND, ALTHOUGH THERE WAS VAGUE REFERENCE TO CONTACT WITH THE RESPONDENT FROM TIME TO TIME. NOTHING, HOWEVER, APPEARS TO HAVE BEEN DONE BY THE INTERVENER TO ASSERT ITS RIGHTS AS REPRESENTATIVE OF THE EMPLOYEES OR TO EXERCISE THOSE RIGHTS ON BEHALF OF THE EMPLOYEES IN A POSITIVE AND MEANINGFUL WAY THROUGHOUT THE WHOLE PERIOD OF APRIL 1963 TO DATE. THIS LACK OF INTEREST EVEN EXTENDED TO FAILURE ON THE PART OF THE INTERVENER TO ENFORCE THE MAINTENANCE OF MEMBERSHIP CLAUSE OF THE AGREEMENT.

8. HAVING REGARD TO ALL THE EVIDENCE AND WHAT WAS ALLEGED BY THE PARTIES, THE BOARD FINDS THAT THE INTERVENER HAS ABANDONED ITS BARGAINING RIGHTS AND THAT IT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT HERETOFORE REPRESENTED BY IT.



9. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12902-66-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. TREND FLOORING (EASTERN) LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: J. P. NELLIGAN, A. LALONDE AND M. McKENNY FOR THE APPLICANT, W. G. GRAY, Q.C., G. McMURRAY AND J. P. BORDEN FOR THE RESPONDENT, L. S. EVANS FOR THE OBJECTORS.

DECISION OF THE BOARD: APRIL 18, 1967.

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4. HAVING REGARD TO THE NATURE OF THE RESPONDENT'S OPERATIONS, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THERE WAS FILED WITH THE BOARD BY A GROUP OF EMPLOYEES TWO DOCUMENTS EXPRESSING OPPOSITION TO THIS APPLICATION. THE FIRST DOCUMENT DATED MARCH 30TH, 1967, WHICH IS HANDWRITTEN AND BEARS THE SIGNATURES OF 19 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, WAS IDENTIFIED AS PETITION #1. THE SECOND DOCUMENT, DATED MARCH 31ST, 1967, WHICH IS TYPEWRITTEN AND BEARS THE SIGNATURES OF 20 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, WAS IDENTIFIED AS PETITION #2. PAUL TASSE, AN EMPLOYEE OF THE RESPONDENT, TESTIFIED AS TO THE ORIGINATION, PREPARATION AND CIRCULATION OF BOTH PETITIONS.

6. TASSE TESTIFIED THAT IN THE EARLY AFTERNOON OF THURSDAY, MARCH 30TH, HE WAS APPROACHED ON THE JOB BY GLEN McMURRAY, THE SENIOR MANAGEMENT OFFICIAL OF THE RESPONDENT, WHO SHOWED HIM THE NOTICE OF THE APPLICANT'S APPLICATION FOR CERTIFICATION WHICH THE RESPONDENT HAD RECEIVED FROM THE BOARD. ON THAT OCCASION, McMURRAY ASKED TASSE WHAT WAS "HAPPENING ABOUT THE UNION" AND ASKED WHY THE EMPLOYEES HAD NOT TOLD HIM ABOUT THE UNION. TASSE'S EVIDENCE IS THAT HE REPLIED THAT THE EMPLOYEES HAD GONE TO SEE WHAT THE UNION HAD TO OFFER.

HE SUGGESTED TO McMURRAY THAT IF HE WANTED TO KNOW ABOUT THE UNION HE SHOULD CALL A MEETING OF THE EMPLOYEES. IT APPEARS FROM TASSE'S TESTIMONY THAT SOME DISCUSSION THEN ENSUED BETWEEN THEM CONCERNING THE POSTING OF THE NOTICE TO THE EMPLOYEES OF THE APPLICATION (FORM 52). TASSE STATED THAT HE EXPRESSED THE VIEW TO McMURRAY THAT IF THE NOTICE WAS POSTED IN THE OFFICE THE EMPLOYEES MIGHT NOT SEE IT. TASSE ALSO SUGGESTED THAT SINCE THE NOTICE WAS IN ENGLISH AND MOST OF THE EMPLOYEES WERE FRENCH SPEAKING, THE NOTICE SHOULD BE EXPLAINED TO THEM.

7. TASSE TESTIFIED THAT McMURRAY THEREUPON CALLED A MEETING OF THE EMPLOYEES IN THE WAREHOUSE AT THE CLOSE OF WORK AT 5:00 P.M. ON THE SAME DAY. THE TRUCK DRIVER BROUGHT SOME OF THE EMPLOYEES FROM THEIR RESPECTIVE WORKING LOCATION TO THE WAREHOUSE. THE MEETING WAS ATTENDED BY McMURRAY, THE TWO FOREMEN, THE BOOKKEEPER AND ALL OF THE EMPLOYEES. THE BOOKKEEPER, WHO HAD TRANSLATED THE NOTICE TO THE EMPLOYEES OF THE APPLICATION INTO FRENCH, READ IT OUT LOUD, IN FRENCH, TO THE EMPLOYEES. McMURRAY, WITH TASSE TRANSLATING INTO FRENCH, THEN TOLD THE EMPLOYEES THAT WHATEVER THEY DECIDED UPON WAS UP TO THEM. McMURRAY STATED THAT IF THEY WANTED THE UNION THE COMPANY WAS BEHIND THEM, BUT IF THEY DIDN'T WANT THE UNION THAT ALSO WAS FINE. ACCORDING TO TASSE'S EVIDENCE, McMURRAY TOLD THE EMPLOYEES THAT THEY WERE THE BOSS. TASSE AT THAT POINT REQUESTED THAT McMURRAY, THE TWO FOREMEN AND THE BOOKKEEPER LEAVE THE MEETING.

8. TASSE TESTIFIED THAT HE THEREUPON ADDRESSED THE EMPLOYEES AND EXPRESSED HIS VIEWS AS TO THE LIMITATIONS OF HAVING THE APPLICANT REPRESENT THE EMPLOYEES. HE THEN ASKED THE EMPLOYEES TO INDICATE BY A SHOW OF HANDS WHETHER OR NOT THEY FAVOURED SUPPORTING THE UNION. ACCORDING TO TASSE'S EVIDENCE THE EMPLOYEES UNANIMOUSLY DECIDED TO DROP THEIR SUPPORT OF THE APPLICANT. TASSE STATED THAT HE IMMEDIATELY WENT INTO THE OFFICE, WHICH IS ADJACENT TO THE WAREHOUSE, AND INFORMED McMURRAY OF THE EMPLOYEES DECISION. McMURRAY, THE FOREMEN AND THE BOOKKEEPER THEN RETURNED TO THE WAREHOUSE. IN THEIR PRESENCE TASSE INVITED THE EMPLOYEES TO PLACE THEIR SIGNATURES ON A PIECE OF PAPER, WHICH HE EXPLAINED WOULD BE A PETITION OPPOSING THE UNION. NINETEEN EMPLOYEES SIGNED THE DOCUMENT. TASSE'S EVIDENCE IS THAT THE SAME EVENING, AT HIS HOME, HIS WIFE WROTE IN FRENCH THE STATEMENT OF OPPOSITION THAT APPEARS BELOW THE SIGNATURES ON PETITION #1. TASSE STATED THAT HE MAILED THE PETITION TO THE BOARD ON THE FOLLOWING MORNING.

9. TASSE TESTIFIED THAT HE WAS NOT SATISFIED THAT PETITION #1 PROPERLY EXPRESSED THE VIEWS OF THE EMPLOYEES. ON FRIDAY, MARCH 21ST, HE ACCORDINGLY RETAINED THE SERVICES OF A SOLICITOR WHO IMMEDIATELY PREPARED, IN TRIPPLICATE, PETITION #2. TASSE'S EVIDENCE IS THAT SAME AFTERNOON HE WENT TO THE OFFICE OF THE RESPONDENT AND SECURED FROM THE BOOKKEEPER THE TELEPHONE NUMBERS OF THOSE EMPLOYEES WHO WERE NOT SCHEDULED TO REPORT TO WORK AT THE WAREHOUSE ON MONDAY MORNING, APRIL 3RD. TASSE STATED THAT HE TELEPHONED THESE EMPLOYEES AND ASKED THEM TO REPORT AT THE WAREHOUSE ON MONDAY MORNING FOR THE PURPOSE OF SIGNING A NEW PETITION OPPOSING THE UNION. THE EVIDENCE IS THAT ALL OF THE EMPLOYEES MET AT THE WAREHOUSE BEFORE THE COMMENCEMENT OF WORK AT 8:00 A.M. TASSE THEREUPON ASKED AN EMPLOYEE FROM A NEIGHBOURING BUSINESS TO WITNESS ALL OF THE SIGNATURES ON THE NEW PETITION. BERNARD VALIQUETTE TESTIFIED THAT SOME TIME BETWEEN 8:00 A.M. AND 8:30 A.M. HE WITNESSED EACH OF THE EMPLOYEES' SIGNATURES AND THAT THE EMPLOYEES SIGNED ALL THREE COPIES OF PETITION #2 IN THE OFFICE OF THE RESPONDENT. THE EVIDENCE IS THAT THE TWO FOREMEN WERE IN ATTENDANCE AT THE TIME THE EMPLOYEES PLACED THEIR SIGNATURES ON THE PETITION.

10. THE BOARD WILL GIVE WEIGHT TO PETITIONS FILED IN OPPOSITION TO CERTIFICATION APPLICATIONS IF IT IS SATISFIED THAT THE PETITIONS REPRESENT A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHOSE SIGNATURES APPEAR ON THE DOCUMENT. IN THE INSTANT CASE, HAVING REGARD TO THE FACT THAT MOST OF THE EMPLOYEES WERE FRENCH SPEAKING AND THE BOARD'S NOTICE WAS IN ENGLISH, IT WAS REASONABLE FOR THE RESPONDENT TO HAVE THE NOTICE TRANSLATED INTO FRENCH. MEMBERS OF MANAGEMENT, HOWEVER, WERE ACTUALLY PRESENT ON BOTH OCCASIONS WHEN PETITION #1 AND PETITION #2 WERE CIRCULATED AMONG THE EMPLOYEES. IN OUR VIEW, THE EMPLOYEES COULD NOT HELP BUT BE VERY MUCH AWARE OF THEIR PRESENCE. FURTHER, WHILE McMURRAY DID NOT IN WORDS ATTEMPT TO INFLUENCE THE EMPLOYEES, ON THE EVIDENCE, WE FIND THAT TASSE, BY HIS CONDUCT, CLEARLY IDENTIFIED HIMSELF WITH McMURRAY AT THE MEETING ON THURSDAY AFTERNOON OF MARCH 30TH. HAVING DONE SO, TASSE THEN PROCEEDED TO URGE THE EMPLOYEES TO DISASSOCIATE THEMSELVES FROM THE APPLICANT UNION.

11. IN LIGHT OF THE EVIDENCE WHICH REVEALS THE PRESENCE OF MANAGEMENT AT ALMOST ALL STAGES OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE TWO INTERRELATED PETITIONS, WE CAN ONLY CONCLUDE THAT THE EMPLOYEES INEVITABLY WERE BOUND TO ASSOCIATE THE PETITIONS WITH MANAGEMENT. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE NATURAL DESIRE OF EMPLOYEES TO IDENTIFY THEMSELVES WITH THE INTERESTS OF THEIR EMPLOYER (SEE PIGOTT MOTORS CASE 63 CLLC 1125, C.L.S. 76-903) WE ARE NOT PREPARED TO ACCEPT THE PETITIONS AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THEM.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12929-67-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. HARDING CARPETS (COLLINGWOOD) LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #1) V. TEXTILE WORKERS UNION OF AMERICA AFL-CIO-CLC (INTERVENER #2) V. EMPLOYEE (OBJECTOR).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: R. ROWLEY, M. PARENT AND R. WILLIAMS FOR THE APPLICANT, A. D. BRANNEN, K. MESERVE, G. HURLBURT AND H. M. PAYETTE FOR THE RESPONDENT, T. E. ARMSTRONG, V. SKURJAT, M. DAVIDSON AND M. ROBILLARD FOR INTERVENER #2, NO ONE FOR INTERVENER #1, NO ONE FOR THE OBJECTOR.

DECISION OF THE BOARD: APRIL 24, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT FIXER ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF FIXER ASSISTANT FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY A CERTIFICATE DATED APRIL 3RD, 1967 ISSUED BY THE BOARD TO CANADIAN UNION OF OPERATING ENGINEERS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE RESPONDENT AND INTERVENER #2 SUBMIT THAT THE APPLICATION IS PREMATURE AS THE RESPONDENT HAS ONLY RECENTLY COMMENCED ITS PRODUCTION OPERATIONS AND AS OF THE DATE OF THE MAKING OF THE APPLICATION, APRIL 3RD, 1967, ONLY A MINORITY OF THE PLANNED WORK FORCE OF THE RESPONDENT WERE EMPLOYED IN THE PLANT.

4. THE RESPONDENT COMMENCED TO BUILD ITS PLANT IN JULY OF 1966. AS OF THE DATE OF THE INSTANT APPLICATION, THE PLANT WAS LARGELY COMPLETED. THE RESPONDENT HAS IN ITS EMPLOY AT THE PRESENT TIME ITS ENTIRE MANAGEMENT STAFF WHICH INCLUDES A PLANT MANAGER, A SUPERINTENDENT, THREE FOREMEN AND FOUR FIXER ASSISTANT FOREMEN. THE RESPONDENT HAS ALSO HIRED OFFICE STAFF, STATIONARY ENGINEERS AND TWO PERSONS WHO ARE ENGAGED IN QUALITY CONTROL WORK.

5. THE RESPONDENT COMMENCED ITS PRODUCTION OPERATIONS AT THE END OF FEBRUARY, 1967. AS OF APRIL 18TH, THE DATE OF THE HEARING, HOWEVER, THE PLANT WAS ONLY OPERATING AT ABOUT TEN PER CENT OF ITS ANTICIPATED CAPACITY. THE RESPONDENT HAS FOUR DEPARTMENTS IN THE PLANT. THESE ARE THE DYE HOUSE, BLENDING, SPINNING AND TUFTING DEPARTMENTS. AS OF APRIL 14TH, 1967, THE RESPONDENT HAD ONE SHIFT OPERATING IN THE DYE HOUSE AND BLENDING DEPARTMENTS AND TWO SHIFTS OPERATING IN THE SPINNING AND TUFTING DEPARTMENTS. BY THE END OF JULY, 1967, THE RESPONDENT PLANS TO HAVE THREE SHIFTS OPERATING IN THE LATTER TWO DEPARTMENTS AND TWO SHIFTS OPERATING IN THE FORMER TWO DEPARTMENTS.

6. IN THE DYE HOUSE DEPARTMENT, AS OF THE DATE OF THE HEARING, THE RESPONDENT HAD ONE MACHINE IN FULL OPERATION AND A SECOND MACHINE WAS BEING INSTALLED. IT WAS EXPECTED THAT THE SECOND MACHINE WOULD BE OPERATIONAL EARLY IN MAY. IN THE BLENDING DEPARTMENT THE FULL COMPLEMENT OF SIX MACHINES ARE INSTALLED AND IN OPERATION. IN THE SPINNING DEPARTMENT ONE CARDING MACHINE IS IN OPERATION AND A SECOND ONE IS BEING INSTALLED. IT IS EXPECTED THAT THE LATTER MACHINE WILL BE IN USE IN PRODUCTION BY MID-MAY. THE TUFTING DEPARTMENT HAS ONE MACHINE IN OPERATION AND A SECOND ONE IS BEING INSTALLED, WHICH WILL BE IN USE BY THE MIDDLE OF MAY. THREE ADDITIONAL TUFTING MACHINES ARE ON ORDER AND THE EXPECTED DELIVERY DATE FOR THESE MACHINES IS IN THE LATTER PART OF JUNE. THE RESPONDENT PLANS TO HAVE THEM IN OPERATION SOME TIME IN JULY.

7. THE RESPONDENT HAS NO FIXED ORDERS AND THE CARPETING BEING PRODUCED BY ITS COLLINGWOOD PLANT WILL GO ON THE COMPETITIVE MARKET. THE RESPONDENT, HOWEVER, PLANS TO HIRE SUFFICIENT EMPLOYEES BY THE END OF JULY TO OPERATE AT FULL CAPACITY ALL OF THE MACHINERY WHICH IS EITHER NOW OPERATIONAL, IS BEING INSTALLED, OR IS ON ORDER.



8. AS OF APRIL 14TH, THREE PERSONS WERE EMPLOYED IN THE DYE HOUSE DEPARTMENT AND THE RESPONDENT PLANS TO HIRE AN ADDITIONAL THREE EMPLOYEES. SIMILARLY, THREE EMPLOYEES, AS OF THE SAME DATE, WERE EMPLOYED IN THE BLENDING DEPARTMENT AND THE RESPONDENT EXPECTS TO HIRE THREE MORE. BY THE END OF JULY, THE RESPONDENT ANTICIPATES IT WILL BE OPERATING THREE SHIFTS OF TWENTY-THREE EMPLOYEES, OR A TOTAL OF SIXTY-NINE, IN THE SPINNING DEPARTMENT. AS OF APRIL 14TH, THERE WERE SEVENTEEN PERSONS EMPLOYED IN THE SPINNING DEPARTMENT. THE RESPONDENT ALSO PLANS TO HAVE THREE SHIFTS OF TWENTY EMPLOYEES, OR A TOTAL OF SIXTY, IN THE TUFTING DEPARTMENT BY THE END OF JULY. AS OF APRIL 14TH, THERE WERE TWELVE PERSONS EMPLOYED IN THAT DEPARTMENT.

9. AS OF THE DATE OF THE APPLICATION, THE RESPONDENT HAD IN ITS EMPLOY FIFTY-FIVE EMPLOYEES, INCLUDING TEMPORARY LABOURERS. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF FORTY-THREE OF THESE EMPLOYEES. AS OF THE DATE OF THE HEARING, APRIL 18TH, THE RESPONDENT HAD IN ITS EMPLOY SIXTY-ONE PERSONS. BASED ON THE WORK FORCE THAT THE RESPONDENT WILL REQUIRE TO OPERATE ALL OF THE MACHINERY WHEN IT IS INSTALLED, THE RESPONDENT PLANS TO HAVE A WORK FORCE OF APPROXIMATELY 140 EMPLOYEES BY THE END OF JULY. AS OF THE DATE OF THE HEARING, EMPLOYEES WERE BEING TRAINED IN ALL OF THE OCCUPATIONAL CLASSIFICATIONS NEEDED TO CARRY ON THE RESPONDENT'S PRODUCTION OPERATION.

10. ON THE EVIDENCE BEFORE US, WE ARE SATISFIED THAT A BUILD-UP IS TAKING PLACE IN THE WORK FORCE OF THE RESPONDENT AT ITS PLANT AT COLLINGWOOD, AND THAT THE RESPONDENT HAS DEFINITE PLANS FOR INCREASING THE NUMBER OF ITS EMPLOYEES UNTIL THE END OF JULY AT WHICH TIME THE RESPONDENT EXPECTS THAT IT WILL HAVE THE FULL COMPLEMENT OF EMPLOYEES NECESSARY TO OPERATE THE PLANT. ON THE BASIS OF THE CRITERIA THAT HAS BEEN APPLIED IN PREVIOUS CASES, THE BOARD IS OF THE OPINION THAT THE PLANNED INCREASE IN THE WORK FORCE OF THE RESPONDENT IS NOT SUFFICIENTLY ADVANCED TO ENTITLE THE APPLICANT TO OUTRIGHT CERTIFICATION AT THE PRESENT TIME (SEE EMIL FRANT AND PETER WASELOVICH CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,057, C.L.S. 76-539; ESSEX WIRE CORPORATION LIMITED CASE, BOARD FILE NO. 10906-65-R; ALLIED WEAVING (CANADA) LIMITED CASE, BOARD FILE NO. 9453-64-R).

11. THE BOARD ACCORDINGLY DIRECTS THAT THE RESPONDENT REPORT TO THE BOARD IN WRITING THE TOTAL NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AS OF THE END OF EACH WEEK COMMENCING WITH THE WEEK ENDING ON FRIDAY, APRIL 28TH, 1967.

12. MR. S. G. GRIZZLE, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF FRANCIS BONWICK.

12959-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. PORT ARTHUR SHIPBUILDING COMPANY (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: LORNE INGLE AND OLIVER BRETON FOR THE APPLICANT, THOMAS P. CALLON, Q.C., AND GEORGE R. SEABROOKE FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 27, 1967.

2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT OF ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

3. THE RESPONDENT SUGGESTED A BARGAINING UNIT OF ALL OFFICE AND CLERICAL STAFF AND DRAFTSMEN. THE RESPONDENT TOOK THE POSITION THAT THE TERM TECHNICAL EMPLOYEES WAS TOO BROAD AND MIGHT WELL CREATE CONFUSION AMONGST THE EMPLOYEES AND THEIR BARGAINING AGENTS. IT APPEARS THAT THERE ARE AT THE PRESENT TIME FIVE UNIONS REPRESENTING EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR. EACH OF THE BARGAINING UNITS DESCRIBED IN THE COLLECTIVE AGREEMENTS IS IN THE TERMS OF AN "ALL EMPLOYEE" BARGAINING UNIT. THE APPLICANT IS ONE OF THE FIVE BARGAINING AGENTS FOR CERTAIN EMPLOYEES OF THE RESPONDENT, AND THE UNIT REPRESENTED BY THE APPLICANT READS AS FOLLOWS:

ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT  
OFFICE STAFF, FOREMEN, PERSONS ABOVE THE RANK  
OF FOREMAN, SECURITY GUARDS, CAFETERIA STAFF,  
PIPEFITTERS, COPPERSMITHS, AND THEIR APPRENTICES  
AND HELPERS, PAINTERS AND BRUSH HANDS, CARPENTERS,  
JOINERS AND MILLWORK EMPLOYEES, POWER HOUSE  
OPERATORS, STEAM LOCOMOTIVE CRANE OPERATORS,  
GANTRY AND CLYDE TYPE CRANE OPERATORS.

4. IN ADDITION, THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 865, THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, LOCAL 1671, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE-FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628, AND LUMBER & SAWMILL WORKERS UNION LOCAL 2693 ALSO REPRESENT UNITS OF EMPLOYEES WHICH ARE DESCRIBED AS ALL EMPLOYEES SAVE AND EXCEPT OFFICE STAFF, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS, CAFETERIA STAFF, AND EMPLOYEES PRESENTLY COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS OF THE OTHER BARGAINING AGENTS.

5. IT THEREFORE APPEARS THAT APART FROM THE SECURITY GUARDS AND THE CAFETERIA STAFF, THE ONLY GROUP OF EMPLOYEES WHO ARE NOT ALREADY REPRESENTED ARE PERSONS CLASSIFIED AS OFFICE STAFF. IT IS THIS GROUP OF EMPLOYEES WHOM THE APPLICANT IN THE INSTANT CASE SEEKS TO REPRESENT. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND THE CONFUSION WHICH MIGHT ARISE IN THE INSTANT CASE IF THE TERM "TECHNICAL EMPLOYEES" WERE USED, THE BOARD THEREFORE FINDS THAT ALL OFFICE EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ACCOUNTANT, PURCHASING AGENT, AND ONE SECRETARY EACH TO THE MANAGER, THE ASSISTANT MANAGER AND THE PERSONNEL OFFICER, SECURITY GUARDS, CAFETERIA STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 865, THE RESPONDENT AND THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, LOCAL 1671, THE RESPONDENT AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES

OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628, THE RESPONDENT AND THE LUMBER & SAWMILL WORKERS UNION LOCAL 2693, AND THE RESPONDENT AND THE APPLICANT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DECLARES THAT PERSONS DESCRIBED AS DRAFTSMEN AND PERSONS DESCRIBED AS DETAILERS-BILLERS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

7. FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER DECLARES THAT THE BARGAINING UNIT IN THIS MATTER INCLUDES ALL EMPLOYEES OF THE RESPONDENT WHO ARE NOT SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT DESCRIBED ABOVE.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

12965-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. DEERFIELD PLASTICS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: T. E. ARMSTRONG AND J. HORAN FOR THE APPLICANT, C. N. BAKER FOR THE RESPONDENT, W. R. MAXWELL FOR THE OBJECTORS.

DECISION OF THE BOARD: APRIL 26, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT NEWMARKET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE RESPONDENT IN ITS REPLY INDICATED THAT THE TEXTILE WORKERS UNION OF AMERICA MIGHT HAVE A CLAIM TO REPRESENT THE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THE TEXTILE WORKERS UNION

ACCORDINGLY WAS GIVEN NOTIFICATION BY THE BOARD OF THE INSTANT APPLICATION AND OF THE HEARING. THE UNION, HOWEVER, FILED NO INTERVENTION NOR WAS IT REPRESENTED AT THE HEARING. THE EVIDENCE IS THAT THE TEXTILE WORKERS UNION WAS CERTIFIED BY THIS BOARD ON DECEMBER 23RD, 1960, BUT THAT NO COLLECTIVE AGREEMENT WAS EVER ENTERED INTO BY THE UNION AND THE RESPONDENT. MOREOVER, THE RESPONDENT INFORMED THE BOARD THAT IT HAD NOT HAD ANY COMMUNICATION WITH THE UNION FOR MANY YEARS. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE TEXTILE WORKERS UNION OF AMERICA HAS ABANDONED ITS BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES OF THE RESPONDENT.

4. THERE WAS FILED WITH THE BOARD A TYPEWRITTEN STATEMENT OF DESIRE DATED APRIL 12TH, 1967, BEARING THE SIGNATURES OF TWENTY-FIVE PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, EXPRESSING OPPOSITION TO THIS APPLICATION. HAVING REGARD TO THE EVIDENCE OF THE PARTICIPATION AND ASSISTANCE OF THE RESPONDENT IN THE PREPARATION OF THE STATEMENT AND THE FACT THAT MEMBERS OF MANAGEMENT WERE PRESENT WHEN THE EMPLOYEES WERE ASKED TO SIGN THE DOCUMENT, WE ARE NOT PREPARED TO ACCEPT THE STATEMENT OF DESIRE AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHOSE SIGNATURES APPEAR UPON IT. THE BOARD ACCORDINGLY FINDS THAT THE DOCUMENT DOES NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

#### INDEXED ENDORSEMENT - TERMINATION

12680-66-R: CAMILLE VIGNEAULT (APPLICANT) v. THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS-LOCAL 89 (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND O. HODGES.

APPEARANCES AT HEARING: W. I. C. BINNIE FOR THE APPLICANT, AND L. A. MACLEAN AND N. A. PAXTON FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 11, 1967.

1. AT THE HEARING HELD IN THIS MATTER, PURSUANT TO THE BOARD'S ENDORSEMENT OF THE RECORD DATED MARCH 7TH, 1967, THE RESPONDENT ADDUCED EVIDENCE RELATING TO THE BARGAINING RIGHTS HELD BY IT WITH RESPECT TO EMPLOYEES OF KAPUSKASING LAUNDRY & DRY CLEANERS LIMITED. ON THE MATERIAL BEFORE THE BOARD, IT APPEARS THAT THE RESPONDENT, THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS- LOCAL 89, IS IN FACT THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT, AND THAT IT HAS NOT ABANDONED THOSE RIGHTS. THE RESPONDENT'S BARGAINING RIGHTS FLOW FROM A



COLLECTIVE AGREEMENT DATED FEBRUARY 1ST, 1965, AND WHICH WOULD, BY ITS TERMS, EXPIRE ON JANUARY 31ST, 1966, SUBJECT TO RENEWAL OR TO THE GIVING OF NOTICE. ALTHOUGH THE MATTER IS NOT FREE FROM DOUBT (THE STYLE OF CAUSE OF THE COLLECTIVE AGREEMENT REFERRING TO THE INTERNATIONAL UNION AND THE EXECUTION CLAUSE REFERRING TO THE LOCAL UNION), THE BOARD, HAVING REGARD TO ALL OF THE MATERIAL FILED AND THE EVIDENCE BEFORE IT, AND THE REPRESENTATIONS OF THE PARTIES, FINDS THAT THE RESPONDENT IS THE TRADE UNION ENTITLED TO BARGAIN ON BEHALF OF THE EMPLOYEES OF KAPUSKASING LAUNDRY & DRY CLEANERS LIMITED, AND THAT THE COLLECTIVE AGREEMENT REFERRED TO IS BINDING UPON IT.

2. IT WAS URGED BY THE RESPONDENT THAT A MEMORANDUM DATED MARCH 21ST, 1966, CONSTITUTES THE COLLECTIVE AGREEMENT NOW IN EFFECT BETWEEN THE RESPONDENT AND THE EMPLOYER. WE CANNOT ACCEPT THIS CONTENTION. THE MEMORANDUM PURPORTS TO DO NO MORE THAN TO EFFECT CHANGES IN THE COLLECTIVE AGREEMENT, AND DOES NOT PURPORT TO BE A COLLECTIVE AGREEMENT IN ITSELF. THE COLLECTIVE AGREEMENT, BY ITS TERMS, HAVING RENEWED ITSELF ON FEBRUARY 1ST, 1966, WOULD TERMINATE ON JANUARY 31ST, 1967, SUBJECT TO THE GIVING OF NOTICE TO BARGAIN. WHETHER OR NOT SUCH NOTICE WAS GIVEN (A MATTER NOT IN ISSUE HERE), AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS WOULD BE TIMELY IF MADE WITHIN TWO MONTHS PRIOR TO JANUARY 31ST, 1967. THE PRESENT APPLICATION WAS MADE ON JANUARY 31ST, 1966, AND IS TIMELY.

3. THE BOARD WILL THEREFORE HEAR EVIDENCE RELATING TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT FILED WITH THE BOARD IN SUPPORT OF THE APPLICATION AS INDICATING THE VOLUNTARY SIGNIFICATION OF THE DESIRE OF EMPLOYEES NO LONGER TO BE REPRESENTED BY THE RESPONDENT.

4. THE EXHIBITS FILED INCLUDE A NUMBER OF LETTERS FROM A FIRM OF SOLICITORS IN KAPUSKASING. IN SOME CASES THESE LETTERS WERE WRITTEN ON BEHALF OF KAPUSKASING LAUNDRY & DRY CLEANERS LIMITED, AND DEAL WITH NEGOTIATIONS BETWEEN THE EMPLOYER AND THE TRADE UNION. OTHER CORRESPONDENCE APPEARS TO BE ON BEHALF OF THE APPLICANT IN THE INSTANT CASE, WHO IS ONE OF THE EMPLOYEES CONCERNED. COUNSEL FOR THE RESPONDENT SUBMITTED THAT ON THESE FACTS MANAGEMENT INTERFERENCE WAS ESTABLISHED, AND THE APPLICATION SHOULD BE DISMISSED ON THAT GROUND.

5. IF THE BOARD WERE TO DETERMINE THAT THERE HAD BEEN MANAGEMENT SUPPORT FOR THIS APPLICATION, THEN, AS COUNSEL SUGGESTS, THE APPLICATION WOULD BE DISMISSED. WE DO NOT, HOWEVER, MAKE ANY DETERMINATION ON THIS ISSUE AT THIS TIME. THE MATTER WAS RAISED FOR THE FIRST TIME AT THE HEARING AND IT MAY BE THAT A REASONABLE EXPLANATION FOR THE CIRCUMSTANCES DESCRIBED COULD BE MADE. THIS IS AN ISSUE WHICH MAY BE SPOKEN TO AT THE NEXT HEARING IN THIS MATTER.

6. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING. THE PURPOSE OF THE HEARING WILL BE TO HEAR EVIDENCE RELATING TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT FILED IN SUPPORT OF THE APPLICATION, AND TO ENTERTAIN THE SUBMISSIONS OF THE PARTIES WITH RESPECT TO THE MATTER RAISED IN THE PRECEDING PARAGRAPH.

INDEXED ENDORSEMENT - SUCCESSOR STATUS

12605-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 172 (APPLICANT) v. CERTAIN CONTRACTOR MEMBERS OF THE WATERPROOFING CONTRACTORS ASSOCIATION (RESPONDENT) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 598 (PREDECESSOR TRADE UNION).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: ANTHONY MARIANO FOR THE APPLICANT,  
R. D. PERKINS FOR THE RESPONDENT, AND STEFAN KOMAROWSKY AND  
RAFAELE D'ALESSANDRO FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: APRIL 11, 1967.

1. THE NAME "OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE APPLICANT IS AMENDED TO READ: "OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 172".

2. THIS IS AN APPLICATION UNDER SECTION 47 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 172 HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 598 BY REASON OF A MERGER, AMALGAMATION OR A TRANSFER OF JURISDICTION.

3. THE MINUTES OF MEETINGS OF LOCAL 598 FILED WITH THE BOARD INDICATE THAT THE MEMBERSHIP OF THAT LOCAL IS OPPOSED TO THE TRANSFER OF JURISDICTION TO LOCAL 172 SOUGHT IN THIS APPLICATION.

4. IN THESE CIRCUMSTANCES AND IN THE ABSENCE OF EVIDENCE INDICATING THAT TRANSFER OF JURISDICTION IS CONSTITUTIONALLY PROPER WITHOUT THE CONSENT OF LOCAL 598, AND IN THIS REGARD THE ATTENTION OF THE APPLICANT IS DIRECTED TO SECTION 141 OF THE CONSTITUTION FILED WITH THE BOARD, THE BOARD DISMISSED THE APPLICATION.

INDEXED ENDORSEMENTS - SECTION 65

12643-66-U: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (COMPLAINANT) v. W. T. HAWKINS LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: M. LEVINSON, J. SACK, D. CRAWFORD AND G. DAINARD  
FOR THE COMPLAINANT, G. A. DELINE AND R. W. CASS FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE: APRIL 11, 1967.

1. FOR REASONS TO BE GIVEN IN WRITING OUR DETERMINATION IS THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY BERTHA ST. PIERRE, THERESA GOLDEN, DIANNE BROOKS, JEAN KELLAR, CHERYLE DEAN, LINDA BAKER, SHARON THORN AND VIRGINIA THORN TO THE SAME OR LIKE EMPLOYMENT, THE SAME WAGES AND EMPLOYMENT BENEFITS AS THEY RECEIVED PRIOR TO AND UP TO THE TIME OF THEIR DISCHARGE.
2. AS COMPENSATION FOR THE LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM THE DATE OF THEIR DISCHARGE TO AND INCLUDING MARCH 31ST, 1967, THE RESPONDENT SHALL PAY THE FOLLOWING SUMS OF MONEY TO THE AGGRIEVED PERSONS:

BERTHA ST. PIERRE	-	\$400.00
THERESA GOLDEN	-	300.00
DIANNE BROOKS	-	400.00
JEAN KELLAR	-	400.00
✓ CHERYL DEAN	-	400.00
LINDA BAKER	-	375.00
SHARON THORN	-	400.00
VIRGINIA THORN	-	400.00
3. THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY THE ABOVE NAMED AGGRIEVED PERSONS BETWEEN THE DATE OF THE HEARING ON MARCH 31ST, 1967 AND THE DATE OF THEIR ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.
4. FOR REASONS TO BE GIVEN IN WRITING THE COMPLAINT AS IT RELATES TO JOHN BOURETTE IS DISMISSED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: APRIL 11, 1967.

I DISSENT.

FOR REASONS TO BE GIVEN IN WRITING I WOULD DISMISS THE COMPLAINT WITH RESPECT TO ALL OF THE NAMED AGGRIEVED PERSONS.

12679-66-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v. TONY'S INDUSTRIAL CATERING LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
J. E. C. ROBINSON AND P. J. O'KEEFE.

APPEARANCES AT HEARING: T. E. ARMSTRONG AND G. HARRISON FOR THE COMPLAINANT, AND NORMAN L. MATHEWS, Q.C., AND TONY RAMUNDI FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: APRIL 19, 1967.

...

3. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON. VERNON SMITH, HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 (A) AND 52 OF THE ACT.

4. VERNON SMITH WAS DISMISSED BY ANTONIO RAMUNDI, PRESIDENT OF THE RESPONDENT, ON JANUARY 21ST, 1967, FOLLOWING THE OCCURRENCE OF DAMAGE TO A TRUCK OF THE RESPONDENT, BEING DRIVEN BY SMITH ON THAT DATE. THE DAMAGE CONSISTED OF A BLOWN MOTOR IN THE TRUCK. IT WAS THE CONTENTION OF THE RESPONDENT THAT THE AGGRIEVED PERSON WAS DISCHARGED BECAUSE HE DAMAGED THE COMPANY'S TRUCK BY NOT TAKING PROPER CARE AND BY NOT CARRYING OUT THE ORDERS OF MANAGEMENT. REGARD WAS HAD, IT WAS ALLEGED, FOR THE AGGRIEVED'S ACCIDENT RECORD. THE COMPLAINANT ALLEGES THAT THE DAMAGE WAS NOT CAUSED BY THE AGGRIEVED AND THAT THE TRUE MOTIVATION OF THE RESPONDENT IN DISCHARGING HIM LAY IN THE FORMER'S OPPOSITION TO THE AGGRIEVED'S MEMBERSHIP IN AND ACTIVITY ON BEHALF OF THE COMPLAINANT UNION.

5. EVIDENCE CALLED BY THE COMPLAINANT WAS TO THE EFFECT THAT THE BLOWN MOTOR WAS DUE TO A MECHANICAL DEFECT IN THE MOTOR AND NOT TO WHAT THE WITNESS CALLED "CUSTOMER ABUSE". IN SUPPORT OF THIS OPINION THE WITNESSES - MECHANICS FROM THE DEALERS FROM WHOM THE RESPONDENT HAD PURCHASED THE TRUCK - FURTHER TESTIFIED THAT THE MANUFACTURER, HAVING INSPECTED THE ENGINE, REPLACED IT WITHOUT COST TO THE RESPONDENT OR THE DEALER. IT SHOULD BE NOTED THAT THIS EVIDENCE WAS NOT KNOWN TO THE RESPONDENT WHEN HE DISCHARGED SMITH. CERTAIN OTHER OCCURRENCES INVOLVING THE TRUCK PRIOR TO ITS FINAL DEMISE ON JANUARY 21ST WERE, HOWEVER, KNOWN TO THE RESPONDENT ON THAT DATE. THE EVIDENCE OF THE AGGRIEVED IS THAT THE TRUCK WAS VIBRATING CONSIDERABLY AND GIVING OFF CLOUDS OF SMOKE TO SUCH A DEGREE THAT HE STOPPED TWICE ON HIS WAY FROM THE PLANT TO HIS FIRST CUSTOMER TO TRY TO ASCERTAIN THE REASON FOR THIS BEHAVIOUR OF THE TRUCK MOTOR. A FELLOW EMPLOYEE AND PASSENGER IN THE TRUCK CONFIRMS THAT THE TRUCK WAS VIBRATING AND SMUTTING SMOKE. THIS CONDITION WAS REPORTED TO THE PLANT BY SMITH WHO GAVE THE INFORMATION IN THE FIRST OF TWO TELEPHONE CALLS HE MADE TO THE RESPONDENT'S OFFICE CONCERNING THE MATTER.

6. THERE IS A CONFLICT OF EVIDENCE WITH RESPECT TO THE POINT OF ORIGIN OF THE FIRST OF THE TELEPHONE CALLS MADE BY SMITH. ACCORDING TO SMITH, HE FIRST CALLED THE OFFICE FROM THE PREMISES OF FAIRBANKS LUMBER COMPANY, WHICH WAS HIS FIRST PLACE OF CALL ON HIS ROUTE. HE SPOKE TO TONY DI LORENZO, A SUPERVISOR, AND TOLD HIM THAT THE TRUCK WAS SMOKING AND VIBRATING. HE TESTIFIED THAT DE LORENZO TOLD HIM, HE, DI LORENZO, WOULD TRY TO GET IN TOUCH WITH THE MECHANIC AND TO CALL BACK IN FIVE MINUTES. THE AGGRIEVED WENT ON TO SAY THAT HE WENT BACK TO THE TRUCK IN THE LUMBER YARD AND UPON LIFTING THE HOOD SAW THAT A HOLE HAD BEEN BLOWN IN THE SIDE OF THE MOTOR. HE THEN,



ACCORDING TO HIS TESTIMONY, PHONED THE RESPONDENT'S OFFICE AGAIN AND REPORTED THE NEW DISCOVERY TO DI LORENZO. ARRANGEMENTS WERE MADE TO TRANSFER HIS LOAD TO ANOTHER TRUCK AND HE CONTINUED ON HIS ROUTE.

7. DI LORENZO'S TESTIMONY IS THAT, IN HIS FIRST CALL, SMITH REPORTED THE SMOKE AND VIBRATION AND STATED THAT HE WAS ON DUFFERIN STREET, NO MENTION WAS MADE AT THIS TIME TO FAIRBANKS LUMBER COMPANY ACCORDING TO THIS WITNESS. DI LORENZO WENT ON TO SAY THAT SMITH WAS TOLD TO STAY WHERE HE WAS UNTIL THE TOW TRUCK CAME. DI LORENZO THEN SENT OUT THE TOW TRUCK TO PICK UP SMITH'S VEHICLE. SOME TWENTY MINUTES LATER, DI LORENZO SAYS, SMITH CALLED AGAIN. THIS TIME HE STATED, ACCORDING TO DI LORENZO, THAT HE WAS IN THE FAIRBANKS LUMBER YARD AND THAT THERE WAS A HOLE IN THE MOTOR. SOME TIME AFTER THE SECOND PHONE CALL THE TOW TRUCK CAME BACK WITHOUT THE DAMAGED TRUCK. THE TOW TRUCK DRIVER, ANGELO PETTANI, GAVE EVIDENCE THAT HE HAD BEEN DISPATCHED TO PICK UP SMITH'S TRUCK ON DUFFERIN STREET, BUT HAD BEEN UNABLE TO FIND IT AND HAD REPORTED THIS FACT TO DI LORENZO.

8. IN LIGHT OF THE ACTION TAKEN BY DI LORENZO AND PETTANI, FOLLOWING THE FIRST PHONE CALL, IT SEEMS OBVIOUS THAT SMITH DID NOT STATE DURING THAT CALL THAT HE WAS THEN AT FAIRBANKS LUMBER. IF HE HAD SAID SO THERE WOULD HAVE BEEN NO REASON WHATSOEVER FOR DI LORENZO TO SEND THE TRUCK OUT TO LOOK FOR SMITH SOMEWHERE ON DUFFERIN STREET RATHER THAN DIRECTING HIM STRAIGHT TO THE LUMBER YARD.

9. THE POINT OF ALL THIS IS THAT, ON THE BASIS OF WHAT HE KNEW OF THE INCIDENT ON THE 21ST OF JANUARY, THE RESPONDENT HAD REASONABLE GROUNDS TO BELIEVE THAT SMITH HAD DRIVEN THE TRUCK, NOTWITHSTANDING ITS CONDITION, AS REPORTED BY SMITH HIMSELF, AFTER HE HAD BEEN TOLD TO AWAIT THE TOW TRUCK, AND THAT THIS HAD CAUSED THE ULTIMATE DAMAGE TO THE ENGINE. LATER THAT AFTERNOON, RAMUNDI INFORMED THE AGGRIEVED THAT HE WAS DISCHARGING HIM BECAUSE HE HAD BLOWN THE MOTOR ON THE TRUCK.

10. THERE WAS EVIDENCE THAT THE AGGRIEVED HAD TAKEN AN ACTIVE PART IN THE ACTIVITIES OF THE UNION AND THAT THIS WAS KNOWN TO THE RESPONDENT. THERE WAS EVIDENCE THAT RAMUNDI TOOK A VERY ACTIVE PART IN ATTEMPTING TO DISCOURAGE THE ADVENT OF THE UNION. HE HAD ATTEMPTED TO INDUCE THE EMPLOYEES TO FORM A DRIVERS ORGANIZATION. THE AGGRIEVED HAD LET RAMUNDI KNOW THAT HE REJECTED ANY SUGGESTION OF AN EMPLOYEES ORGANIZATION.

11. THE PERIOD COVERED BY THE UNION ORGANIZATIONAL DRIVE AND THE ABOVE MATTERS RAN FROM EARLY OCTOBER TO OCTOBER 20TH, WHEN THE UNION WAS CERTIFIED. THE AGGRIEVED WAS THE ONLY EMPLOYEE ON THE BARGAINING COMMITTEE. MEETINGS WERE HELD WITHOUT AGREEMENT BEING REACHED, AND ON JANUARY 19TH, 1967, A MEETING WAS HELD BEFORE A CONCILIATION OFFICER.

12. DURING THIS PERIOD OF UNION ACTIVITY, HOWEVER, THE AGGRIEVED HAD BEEN INVOLVED IN TWO OTHER ACCIDENTS WITH THE RESPONDENT'S TRUCKS, WHICH RESULTED IN CONSIDERABLE DAMAGE TO THE VEHICLES, SO THAT THE INCIDENT HERE DEALT WITH CONSTITUTED A THIRD EVENT, RESULTING, IN SO FAR AS THE RESPONDENT WAS AWARE AT THE DATE OF THE DISCHARGE, IN FURTHER DAMAGE TO HIS EQUIPMENT AT THE HANDS OF THE AGGRIEVED. IT WOULD APPEAR THEN THAT THE RESPONDENT,

IF HE HAD SO DESIRED, MIGHT HAVE USED EITHER OF THE PRIOR INCIDENTS AS GROUNDS FOR DISMISSAL IF HIS PRIMARY CONCERN WAS THE AGGRIEVED'S UNION ACTIVITIES. IT WOULD ALSO APPEAR THAT THE THIRD INCIDENT, AS UNDERSTOOD BY THE RESPONDENT AT THE TIME, COULD QUITE REASONABLY HAVE PROVOKED THE RESPONDENT INTO TAKING THE ACTION HE DID.

13. IN SUPPORT OF HIS ALLEGATION THAT HIS DISCHARGE WAS THE RESULT OF HIS UNION ACTIVITIES, THE AGGRIEVED RELIED HEAVILY UPON THE FACT THAT THE RESPONDENT WAS HEARD TO EXCLAIM WORDS TO THE EFFECT THAT SMITH HAD, TO SUBSTITUTE A WORD, "FIXED" HIM AND IT WAS NOW HIS TURN. THE EVIDENCE DISCLOSES, HOWEVER, THAT THIS REMARK WAS MADE SUBSEQUENT TO THE DISCHARGE BY SOME DAYS. IT ALSO IS CLEAR FROM THE EVIDENCE THAT THE MATTER UNDER DISCUSSION BETWEEN RAMUNDI AND SOME OF HIS DRIVERS AT THE TIME THE STATEMENT WAS MADE, HAD TO DO WITH REPAYMENT BY THE DRIVERS FOR SHORTAGES AND LOSSES. SMITH'S NAME CAME INTO THE CONVERSATION AND ONE OF THE DRIVERS SUGGESTED TO RAMUNDI THAT "HE HAS LEFT - LEAVE HIM ALONE". TO THIS RAMUNDI, THE WITNESS SWORE, REPLIED, "HE 'FIXED' ME, NOW ITS MY TURN. HE OWES ME \$173.00." THE WITNESS SAID HE HEARD A DIFFERENT AMOUNT LATER.

14. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE AGGRIEVED HAS NOT MET THE ONUS UPON HIM TO ESTABLISH THAT HE WAS DISCHARGE CONTRARY TO SECTIONS 50 (A) OR 52 OF THE LABOUR RELATIONS ACT.

15. THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: APRIL 19, 1967.

I DISSENT.

MY COLLEAGUES IN THE MAJORITY DECISION HAVE GONE INTO THE ALLEGED REASON FOR THE DISCHARGE OF THE AGGRIEVED VERNON SMITH AT GREAT LENGTH. WE HAVE HAD EXPERT EVIDENCE FROM COMPLETELY NEUTRAL WITNESSES TO THE EFFECT THAT THE DAMAGE TO THE TRUCK IN QUESTION WAS DUE TO A DEFECT IN THE ENGINE BLOCK, WHICH WAS READILY ACCEPTED BY THE DEALER AND MANUFACTURER AS THEIR RESPONSIBILITY, AND NOT THAT OF THE AGGRIEVED.

ALL OF THE OTHER EVIDENCE RELATING TO PHONE CALLS, THE LOCATION OF THE TRUCK, THE SPEED AT WHICH IT WAS TRAVELLING PRIOR TO THE ENGINE BLOW OUT ETC., IS JUST SIMPLY WINDOW DRESSING BROUGHT OUT IN EVIDENCE BY THE RESPONDENT TO CONFUSE AND CLOAK THE REAL REASON WHICH WAS QUITE SIMPLY THE AGGRIEVED'S UNION ACTIVITY.

TO SAY THAT THE EMPLOYER, MR. RAMUNDI, TOOK A VERY ACTIVE PART IN ATTEMPTING TO DISCOURAGE THE ADVENT OF THE UNION IS TO COMPLETELY UNDERSTATE THE POSITION BASED ON THE EVIDENCE AT THE HEARING.

MR. SMITH, THE AGGRIEVED, WAS AN ACTIVE SUPPORTER OF THE UNION AT THE ORGANIZATION PHRASE OF THE UNION'S ENDEAVOUR. LATER, HE WAS THE MOST PROMINENT UNION SUPPORTER AMONG THE RESPONDENT'S EMPLOYEES, HAVING TAKEN QUITE AN OPEN AND ACTIVE PART IN NEGOTIATIONS. AS THE EVIDENCE UNFOLDED, WITH REGARD TO MANY AND VARIED ATTEMPTS MADE BY THE EMPLOYER, MR. RAMUNDI, TO DISCOURAGE SMITH AND

OTHER EMPLOYEES FROM EXERCISING THEIR RIGHTS UNDER THE ONTARIO LABOUR RELATIONS ACT, WE COULD ONLY ADMIRE THE AGGRIEVED FOR HIS STAND IN EXERCISING HIS LEGAL RIGHT TO CHOOSE THE UNION OF HIS CHOICE, AND TO ACTIVELY PARTICIPATE IN ITS LAWFUL ACTIVITIES DESPITE THE CONSTANT AND FLAGRANT ACTIONS AND UTTERANCES OF HIS EMPLOYER, WHO QUITE OBVIOUSLY HAS MUCH TO LEARN YET ABOUT THE BASIC RIGHTS OF EMPLOYEES IN A FREE SOCIETY.

THE DISCHARGE OF SMITH WAS THE COUP DE GRACE IN THE EMPLOYER, RAMUNDI'S ANTI UNION ACTIVITY AND OBVIOUSLY HE HAD TO TAKE ADVANTAGE OF THIS VITAL PSYCHOLOGICAL EFFECT TO OPENLY BRAG IMMEDIATELY AFTER THE DISCHARGE TO OTHER EMPLOYEES THAT SMITH HAD S\_\_\_\_\_ HIM NOW IT WAS HIS TURN. THE EVIDENCE IS, THAT COUPLED WITH THIS REMARK, MR. RAMUNDI MADE A GESTURE THAT IMPLIED THAT HE WAS NOW GOING TO DRIVE HIS POINT HOME.

BASED ON THE EVIDENCE BEFORE ME, I HAVE NO DIFFICULTY IN FINDING THAT THE AGGRIEVED, VERNON SMITH, WAS DISMISSED FROM HIS EMPLOYMENT BECAUSE OF HIS UNION ACTIVITY. I WOULD HAVE REINSTATED THE AGGRIEVED WITH FULL COMPENSATION. THE ACTIVITIES OF THE EMPLOYER, MR. RAMUNDI, IN PURSUING HIS ANTI UNION ACTIVITIES, AND IN DISCHARGING MR. SMITH FOR EXERCISING HIS LEGAL RIGHTS IN A FREE SOCIETY, ARE REPREHENSIBLE, AND ARE SUCH THAT THIS BOARD MUST NEVER HESITATE TO CONDEMN AND DISCOURAGE.

12697-66-U: GEORGE THOMAS (COMPLAINANT) v. COLLINGWOOD SHIPYARDS (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: GEORGE THOMAS FOR THE APPLICANT, AND  
B. H. STEWART AND GORDON BRANIFF FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:

APRIL 18, 1967.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 59A (1) (D) OF THE LABOUR RELATIONS ACT.

2. THERE WAS A PREVIOUS COMPLAINT MADE BY THE COMPLAINANT HEREIN. TO ALL INTENTS AND PURPOSES, THAT COMPLAINT WAS SETTLED BY THE BOARD'S OFFICER APPOINTED IN THAT BEHALF, NEVERTHELESS, REFERENCE MUST BE MADE TO IT IN THESE PROCEEDINGS BECAUSE IT FORMS THE BACKGROUND FOR THE EVENTS TO BE DEALT WITH IN THE COMPLAINT NOW BEFORE THE BOARD. FURTHERMORE, NOTWITHSTANDING THE SETTLEMENT MADE BY THE BOARD'S OFFICER, THERE IS A DIFFERENCE BETWEEN THE PARTIES AS TO THE PRECISE NATURE OF THE COMPLAINT MADE ON THAT FIRST OCCASION, AND WHAT THE TRUE NATURE OF THAT COMPLAINT WAS HAS SOME RELEVANCE IN THESE PROCEEDINGS. THE MATTER WILL BE FURTHER REFERRED TO LATER IN THE DECISION.

3. THE IMMEDIATE CAUSES GIVING RISE TO THIS COMPLAINT WERE THE POSTING BY THE COMPANY ON JANUARY 25TH, 1967, OF THE NOTICE SET OUT BELOW, AND THE CONSEQUENCES FLOWING THEREFROM.

4. THE NOTICE READS AS FOLLOWS:-

TO ALL WELDERS

RECENTLY AN EMPLOYEE OF THIS DEPARTMENT COMPLAINED TO THE DEPARTMENT OF LABOUR ABOUT OUR SYSTEM OF SCHEDULING NIGHT SHIFT IN THE WELDING DEPARTMENT.

SUBSEQUENT INVESTIGATION SHOWED THAT WE DO NOT IN FACT AS YOU KNOW ACTUALLY CARRY OUT THE CLAUSE IN OUR LABOUR AGREEMENT WHICH READS AS FOLLOWS ON PAGE 45.

"ALL NIGHT WORK SHALL BE PERFORMED BY THE EMPLOYEES IN THE CLASSIFICATION CONCERNED, IN ROTATION, ON A TWO WEEK ABOUT BASIS."

WHILE IT IS TOO LATE TO ALTER THIS NEXT SCHEDULED NIGHT SHIFT I REGRET TO SAY IT APPEARS WE MUST GIVE SERIOUS CONSIDERATION TO HAVING ALL WELDERS COME OFF NIGHTS TWO WEEK HENCE AND BE REPLACED BY A SIMILAR NUMBER FROM DAY SHIFT.

THIS CHANGE IN PAST PROCEDURES IF FOUND NECESSARY WILL NOT APPLY TO THOSE IN SUPERVISORY POSITIONS OR STOREKEEPERS.

KINDLY WATCH THIS NOTICE BOARD FOR FURTHER DIRECTION.

5. IN THE CIRCUMSTANCES, THE FIRST PARAGRAPH OF THIS NOTICE POINTS AS UNERRINGLY AND UNEQUIVOCALLY AT THE COMPLAINANT AS THOUGH HE HAD BEEN NAMED. THE INEVITABLE RESULT OF THIS, WHICH THE COMPANY SHOULD HAVE CLEARLY FORESEEN, WAS TO SINGLE OUT THE COMPLAINANT TO HIS FELLOW EMPLOYEES AS ONE WHO SOUGHT TO UPSET WHAT THE EVIDENCE ESTABLISHED WAS A SHIFT ARRANGEMENT AFFECTING SOME TWO HUNDRED WELDERS WHICH HAD BEEN IN OPERATION FOR SOME EIGHT YEARS AND CONCERNING WHICH EVERYONE WAS QUITE SATISFIED.

6. EVEN IF THE COMPANY FELT IT WAS NECESSARY TO DEAL WITH THE MATTER DIRECTLY WITH THE EMPLOYEES CONCERNED RATHER THAN, AS MIGHT BE REASONABLY EXPECTED, THROUGH THEIR BARGAINING AGENT, THE UNITED STEELWORKERS OF AMERICA, THE POINTING OF THE FINGER AT THE COMPLAINANT WAS AN ENTIRELY UNNECESSARY MOVE ON THE COMPANY'S PART. THE NOTICE WOULD HAVE BEEN JUST AS EFFECTIVE IN PERFORMING ITS OSTENSIBLE PURPOSE WITHOUT ANY REFERENCE TO A COMPLAINT TO THE DEPARTMENT OF LABOUR.

7. IT APPEARS HIGHLY EXTRAORDINARY, TO EMPHASIZE A POINT TOUCHED UPON ABOVE, THAT IN THE FACE OF A COLLECTIVE AGREEMENT AND AN APPARENTLY GOOD RELATIONSHIP WITH THE UNITED STEELWORKERS, AND IN SO VITAL A MATTER, INVOLVING, AS IT SEEMED, AN ALLEGATION OF CONTRACT VIOLATIONS, THE COMPANY WOULD NOT HAVE IMMEDIATELY BEEN IN TOUCH WITH THE UNION AND DISCUSSED THE MATTER WITH IT BEFORE ISSUING THE NOTICE, A NOTICE WHICH THE COMPANY KNEW OR SHOULD HAVE KNOWN, QUITE APART FROM ANY REFERENCE TO THE COMPLAINANT, WAS LIKELY TO



CAUSE CONSIDERABLE UPSET AMONG THE WELDERS. TO THEN GRATUITOUSLY INSERT THE REFERENCE TO THE COMPLAINT IN SUCH A NOTICE INDICATES EITHER AN UNBELIEVABLE LACK OF UNDERSTANDING OR A DEPLORABLE LACK OF CONCERN AS TO THE PROBABLE AND REASONABLY FORESEEABLE CONSEQUENCES OF SUCH AN ACT, OR A DELIBERATE ATTEMPT TO PILLORY THE COMPLAINANT BEFORE THE EYES OF HIS FELLOW EMPLOYEES. ONE WONDERS INDEED IF THE NOTICE WAS NECESSARY AT ALL. THE PARTICULAR MATTER OF THE SHIFT ARRANGEMENT WAS EVENTUALLY SETTLED BETWEEN THE COMPANY AND THE UNION IN THE NORMAL WAY. THE AGREEMENT WAS TO RETAIN THE PRACTICE FOLLOWED BEFORE THE NOTICE WAS POSTED.

8. IN HIS TESTIMONY THE COMPLAINANT DENIED THE ALLEGATION CONTAINED IN THE NOTICE THAT HE HAD COMPLAINED TO THE DEPARTMENT OF LABOUR ABOUT THE SYSTEM OF SCHEDULING THE NIGHT SHIFT IN THE WELDING DEPARTMENT. THIS HAS REFERENCE TO THE PREVIOUS COMPLAINT ALLUDED TO EARLIER IN THIS DECISION. THE COMPLAINANT STATED THAT HIS ORIGINAL COMPLAINT WAS BASED UPON DISCRIMINATORY ACTION TAKEN AGAINST HIM BY THE COMPANY FOLLOWING AN INCIDENT THAT OCCURRED ON DECEMBER 6TH, 1966. THE COMPLAINANT WAS ON THE NIGHT SHIFT ON THAT DATE AND TOGETHER WITH A FELLOW EMPLOYEE REQUESTED A TWO HOUR PASS TO ATTEND A UNION MEETING. BOTH APPLICATIONS WERE REFUSED BY THE FOREMAN AND ALSO BY THE NIGHT SUPERVISOR TO WHOM THE FOREMAN'S DECISION WAS APPEALED. THE COMPLAINANT FILED A GRIEVANCE PROTESTING THE REFUSAL. SUBSEQUENTLY, ON DECEMBER 8TH, 1966, THE COMPLAINANT WAS TAKEN OFF THE NIGHT SHIFT AND ASSIGNED TO THE DAY SHIFT. HE WAS TOLD THAT THE REASON WAS THAT HE HAD ASKED FOR A PASS TO GO TO A UNION MEETING AND THAT IF HE WANTED TO GO TO UNION MEETINGS HE SHOULD BE ON THE DAY SHIFT. THIS WOULD ENABLE HIM TO ATTEND UNION MEETINGS IN THE EVENING. THE OTHER EMPLOYEE, WHO HAD SOUGHT A PASS AT THE SAME TIME AS THE COMPLAINANT, WAS LEFT ON THE NIGHT SHIFT. THE CHANGE TO THE DAY SHIFT INVOLVED A LOSS OF A 15¢ PER HOUR PREMIUM.

9. THE COMPLAINANT CONSIDERED THE REMOVAL FROM THE NIGHT SHIFT DISCRIMINATORY, SINCE NO CHANGE HAD BEEN MADE IN THE SHIFT ARRANGEMENT FOR THE OTHER MAN, THOMSON. THIS, TOGETHER WITH THE FACT THAT THE WELDER FOREMAN, CREW, HAD TOLD HIM THAT HE WOULD NOT DEAL WITH THE GRIEVANCE BECAUSE IT WAS IMPROPERLY FILED, FORMED, THE COMPLAINANT SWORE, THE SUBJECT MATTER OF HIS FIRST COMPLAINT TO THE BOARD.

10. THROUGH THE BOARD'S OFFICER, AS NOTED ABOVE, THIS COMPLAINT WAS SETTLED. THE TERMS OF SETTLEMENT, AS RELATED BY THE COMPLAINANT AND UNDENIED BY THE COMPANY, ARE WORTH NOTING IN VIEW OF THE CONFLICT OF VIEWS AS TO THE COMPLAINT ITSELF. THESE WERE THAT THE COMPLAINANT APPLY FOR NIGHT SHIFT WORK, ACCORDING TO A SYSTEM THEN IN FORCE, WHEREUPON, HAVING APPLIED, HE WAS PLACED ON THE NIGHT SHIFT, BUT WITHOUT COMPENSATION FOR LOSS OF PREMIUM PAY. ON THE DAY FOLLOWING THE SETTLEMENT OF THE COMPLAINT, THE CONTROVERSIAL NOTICE APPEARED.

11. IT WAS THE COMPANY'S POSITION THAT THE ALLEGATION IN THE NOTICE WAS BASED UPON INFORMATION AND ADVICE RECEIVED BY IT FROM THE BOARD'S INVESTIGATING OFFICER. IT MAY WELL BE, OF COURSE, THAT CONFUSION AND MISUNDERSTANDING COULD HAVE ARISEN IN THE PROCESS OF TRANSMITTING THE COMPLAINANT'S POSITION THROUGH THE OFFICER TO THE COMPANY. THE BOARD'S OFFICER WAS, OF COURSE, NOT AVAILABLE FOR CROSS-EXAMINATION. THE TERMS OF SETTLEMENT, HOWEVER, DO TEND TO SUBSTANTIATE THE COMPLAINANT'S POSITION. THE LATTER WAS VERY DEFINITE IN

HIS EVIDENCE THAT HE HAD NOT ADVERSELY CRITICISED THE SHIFT ARRANGEMENT, THAT, ON THE CONTRARY, HE WAS ALL IN FAVOUR OF THE ARRANGEMENT.

12. EVEN IF WE ACCEPT THE COMPANY'S POSITION WITH RESPECT TO THE FIRST COMPLAINT, THE REFERENCE IN THE NOTICE TO ANY COMPLAINT TO THE BOARD WAS NOT ONLY UNNECESSARY FOR THE CONVEYANCE OF THE MESSAGE, BUT WAS DISCRIMINATORY AND PROVOCATIVE. THAT IT WOULD PROVOKE ILL-WILL BETWEEN THE OTHER WELDERS AND THE COMPLAINANT WAS AN EFFECT WHICH THE COMPANY SURELY MUST HAVE, AND CERTAINLY OUGHT TO HAVE REASONABLY FORESEEN AS THE INEVITABLE CONSEQUENCE OF PUBLICATION OF THE FIRST PARAGRAPH OF THE NOTICE. THAT IT WAS, IN FACT, PROVOCATIVE, IS BORNE OUT BY WHAT FOLLOWED THE POSTING OF THE NOTICE.

13. THE NEXT DAY AN EFFIGY OF THE COMPLAINANT WAS FOUND HANGING FROM A CRANE TRACK ON THE PREMISES OF THE COMPANY. ATTACHED TO THE HANGING FIGURE WAS A PLACARD BEARING A VULGARLY WORDED ALLEGATION CRUDELY ADVISING THAT THIS WAS BETRAY YOUR BUDDY WEEK. THERE IS NO QUESTION THAT THIS EFFIGY WAS A DIRECT RESULT OF THE POSTING OF THE NOTICE.

14. THERE WAS NO EVIDENCE AS TO WHO PREPARED THE EFFIGY OR ITS MESSAGE. THERE IS EVIDENCE, HOWEVER, THAT IT WAS PERMITTED TO REMAIN HANGING ON THE COMPANY'S PREMISES FOR THREE DAYS. ITS PRESENCE WAS KNOWN TO THE COMPANY OFFICERS AS WELL AS TO THE EMPLOYEES. THE PRIMARY BURDEN OF RESPONSIBILITY LAY UPON THE COMPANY TO ACT WITH URGENCY AND DESPATCH IN THIS SITUATION. HOWEVER, IT MAINTAINED SILENCE AND INACTIVITY FOR SO LONG A PERIOD AS TO INVITE THE CONCLUSION THAT IT MUTELY ACQUIESCED IN AND APPROVED OF THIS DISGRACEFUL CONDUCT, WHICH IT OBVIOUSLY KNEW WAS DIRECTED AT THE COMPLAINANT.

15. THE RELEVANT PORTIONS OF SECTION 59(A)(1) OF THE LABOUR RELATIONS ACT READ AS FOLLOWS:-

59A (1) NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL,

- - -

(D) INTIMIDATE OR COERCE OR IMPOSE A PECUNIARY OR OTHER PENALTY ON A PERSON,

BECAUSE OF A BELIEF THAT HE MAY TESTIFY IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE OR IS ABOUT TO MAKE A DISCLOSURE THAT MAY BE REQUIRED OF HIM IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE AN APPLICATION OR FILED A COMPLAINT UNDER THIS ACT OR BECAUSE HE HAS PARTICIPATED OR IS ABOUT TO PARTICIPATE IN A PROCEEDING UNDER THIS ACT.

16. IT IS BEYOND QUESTION THAT IN THIS INSTANCE THE SERIES OF EVENTS REVIEWED ABOVE HAD THEIR ROOT AND ORIGIN IN THE FACT THAT THE COMPLAINANT HAD "FILED A COMPLAINT UNDER THIS ACT". THE VERY WORDING OF THE CONTROVERSIAL NOTICE IS CONFIRMATORY OF THAT STATEMENT.

17. IT IS ALSO INCONTROVERTIBLE THAT BECAUSE HE COMPLAINED HE WAS UNNECESSARILY SINGLED OUT, WHETHER DELIBERATELY OR INADVERTENDLY, AS A SORT OF TRAITOR TO HIS FELLOW EMPLOYEES, WHO, HE TESTIFIED, "HATED HIS GUTS" AS A RESULT. HE FURTHER ENDURED THE PENALTY OF SEEING HIS EFFIGY HANGING WITH ITS CRUDE AND, ACCORDING TO HIS TESTIMONY, FALSE PLACARD PINNED TO IT FOR THREE DAYS AT HIS PLACE OF WORK WITH THE FULL KNOWLEDGE OF HIS EMPLOYER.

18. AS NOTED ABOVE, THERE IS NO EVIDENCE WHATSOEVER THAT THE COMPANY HAD ANYTHING TO DO WITH THE PREPARATION OF OR HANGING OF THE EFFIGY. ITS FAILURE TO CUT THE FIGURE DOWN IMMEDIATELY, HOWEVER, AMOUNTS TO CULPABLE PARTICIPATION IN AND APPROVAL OF THE ORIGINAL ACT OF INDIGNITY AND REDICULE DIRECTED AGAINST THE COMPLAINANT, AND MAKES IT AN ACCOMPLICE OF THOSE WHO PERPETRATED IT. FURTHERMORE, THE FACT THAT THE EFFIGY WAS ALLOWED TO HANG FOR SO LONG COMPELS THE MIND TO ACCEPT AS A FACT THAT THE REFERENCE TO THE COMPLAINT MADE IN THE NOTICE WAS DESIGNED TO DO WHAT IT ACTUALLY DID DO, THAT IS, DENIGRATE THE COMPLAINANT IN THE EYES OF HIS FELLOWS.

19. THE BOARD IS SATISFIED THAT THE CONDUCT OF THE RESPONDENT, SUMMARIZED IN THE FOREGOING PARAGRAPH, AMOUNTS TO A CONTRAVENTION OF SECTION 59A (1) (D) OF THE LABOUR RELATIONS ACT, IN THAT IT CONSTITUTES A PENALTY IMPOSED UPON THE COMPLAINANT BECAUSE HE FILED A COMPLAINT UNDER THIS ACT. HAVING REGARD TO THE PROVISIONS OF SECTION 65(1) (4)(A) OF THE LABOUR RELATIONS ACT AND THE REQUEST OF THE COMPLAINANT, THE BOARD DETERMINES THAT THE RESPONDENT COMPANY SO CONDUCT ITSELF AS TO PREVENT THE COMPLAINANT FROM BEING HELD IN DISREPUTE OR IN ANY WAY ADVERSELY AFFECTED IN HIS EXERCISE OF HIS RIGHTS UNDER THIS ACT BY THE RESPONDENT OR BY ANY PERSON OVER WHOM THE RESPONDENT EXERCISES CONTROL.

DECISION OF BOARD MEMBER H. F. IRWIN:

APRIL 18, 1967.

1. I DISSENT.

2. THE MAJORITY DECISION SETS OUT THE FACTS OF THIS CASE AND THERE IS NO NEED TO REPEAT THEM HERE.

3. THE COMPLAINANT ALLEGES THAT THERE HAS BEEN A CONTRAVENTION OF SECTION 59A (1)(D) OF THE LABOUR RELATIONS ACT, WHICH STATES IN PART THAT NO EMPLOYER SHALL INTIMIDATE OR COERCE OR IMPOSE A PECUNIARY OR OTHER PENALTY ON A PERSON BECAUSE HE HAS FILED A COMPLAINT UNDER THE ACT. HE COMPLAINS OF TWO SPECIFIC MATTERS:-

(1) THE NOTICE "TO ALL WELDERS" POSTED BY THE RESPONDENT COMPANY ON A BULLETIN BOARD LOCATED ON ITS PREMISES ON OR ABOUT JANUARY 25TH, 1967.

(2) THE HANGING OF AN EFFIGY OF THE COMPLAINANT FROM A CRANE TRACK ON THE PREMISES OF THE RESPONDENT COMPANY ON THE DAY FOLLOWING THE POSTING OF THE ABOVE MENTIONED NOTICE.

4. THE FIRST PARAGRAPH OF THE NOTICE "TO ALL WELDERS" READS AS FOLLOWS:-

RECENTLY AN EMPLOYEE OF THIS DEPARTMENT COMPLAINED TO THE DEPARTMENT OF LABOUR ABOUT OUR SYSTEM OF SCHEDULING NIGHT SHIFT IN THE WELDING DEPARTMENT.

5. THE EVIDENCE IS CLEAR AND UNCONTRADICTED THAT THE ORIGINAL COMPLAINT FILED BY THE COMPLAINANT WAS IN RESPECT OF THE REFUSAL OF THE COMPANY TO ISSUE HIM A PASS TO ATTEND A UNION MEETING BEING HELD DURING THE REGULAR SCHEDULED HOURS OF THE NIGHT SHIFT ON WHICH THE COMPLAINANT WAS WORKING AT THE TIME. THIS COMPLAINT WAS WITHDRAWN THROUGH THE SERVICES OF THE BOARD'S FIELD OFFICER WHEN HE VISITED COLLINGWOOD AND INTERVIEWED THE COMPLAINANT AND REPRESENTATIVES OF THE RESPONDENT. THERE IS ABSOLUTELY NO EVIDENCE THAT THE COMPLAINANT OR ANY OTHER EMPLOYEE OF THE RESPONDENT FILED A COMPLAINT WITH THE DEPARTMENT OF LABOUR PERTAINING TO THE SYSTEM OF SCHEDULING THE ROTATION OF EMPLOYEES ON THE NIGHT SHIFT. THE STATEMENT IN THE NOTICE "TO ALL WELDERS" WHICH ATTRIBUTES IT TO AN EMPLOYEE OF THE WELDING DEPARTMENT IS INCORRECT. ON THE CONTRARY, IT FIRST BECAME A SUBJECT OF DISCUSSION IN CONVERSATIONS WHICH TOOK PLACE BETWEEN A REPRESENTATIVE OF THE RESPONDENT AND THE BOARD'S FIELD OFFICER, AND ON THE EVIDENCE ADDUCED AT THE HEARING I MUST CONCLUDE THAT THE ORIGINATION OF THE SAID NOTICE STEMMED FROM THIS CONVERSATION.

6. EVEN IF THE COMPLAINANT HAD MADE SUCH A COMPLAINT AND THE NOTICE "TO ALL WELDERS" HAD RESULTED THEREFROM, THERE WOULD BE NO CONTRAVENTION OF SECTION 59A (1) (D) OF THE ACT BECAUSE THERE IS NO EVIDENCE OF COERCION OR INTIMIDATION TO FORCE THE COMPLAINANT TO DO ANYTHING OR TO PERFORM ANY ACT AGAINST HIS WILL OR TO CEASE TO EXERCISE ANY RIGHTS HE HAS UNDER THE ACT. THERE IS NO EVIDENCE THAT THE RESPONDENT HAS IMPOSED A PECUNIARY OR OTHER PENALTY UPON THE COMPLAINANT OR THAT THE RESPONDENT HAS ATTEMPTED TO IMPOSE ANY SUCH PENALTIES. FOR THESE REASONS, THE COMPLAINT IN RESPECT OF THE NOTICE "TO ALL WELDERS" MUST FAIL. ANY EMBARRASSMENT WHICH MAY HAVE CAUSED THE COMPLAINANT AS A RESULT OF THE POSTING OF THE NOTICE IS REGRETTABLE.

7. AS TO THE HANGING OF THE EFFIGY, THERE WAS NO EVIDENCE ADDUCED AT THE HEARING AS TO WHO PREPARED OR HUNG THE EFFIGY OR WHO PREPARED OR ATTACHED THE VULGARLY WORDED SIGN TO IT. THERE WAS NOT EVEN A SUGGESTION THAT THE RESPONDENT WAS IN ANY WAY CONNECTED WITH THESE ACTIONS.

8. THE RESPONDENT MAY HAVE ACTED WISELY IN POSTPONING THE REMOVAL OF THE EFFIGY UNTIL THE TEMPER OF THE WORKERS HAD COOLED DOWN. THERE IS NOT SUFFICIENT EVIDENCE ON THIS POINT FOR THE BOARD TO MAKE ANY DETERMINATION THEREON. IN ANY EVENT, THERE WAS NOT A TITTLE OF EVIDENCE ADDUCED AT THE HEARING THAT THE RESPONDENT HAD CONTRAVENED SECTION 59A (1) (D) OF THE LABOUR RELATIONS ACT AND THE COMPLAINT IN RESPECT OF THE HANGING OF THE EFFIGY MUST ALSO BE DISMISSED.

INDEXED ENDORSEMENT - SECTION 39(3)

12682-66-M: CANADIAN BUSINESS MACHINES WORKERS' UNION, AND THE NATIONAL CASH REGISTER COMPANY OF CANADA, LIMITED (JOINT APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER).



BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. C. ADAMS, Q.C., JOHN P. SANDERSON, JIM YOUNG  
AND AL WARD FOR THE JOINT APPLICANTS, T. E. ARMSTRONG, R. WHITE AND J.  
PAWSON FOR THE INTERVENER.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE: APRIL 12, 1967.

1. THIS IS A JOINT APPLICATION FOR EARLY TERMINATION OF A COLLECTIVE AGREEMENT. THE AGREEMENT CURRENTLY IN EFFECT BETWEEN THE PARTIES BECAME EFFECTIVE ON JULY 6TH, 1964 AND WOULD BY ITS TERMS, EXPIRE ON JULY 6TH, 1967. IN THE NORMAL COURSE, THE "OPEN SEASON" WITHIN WHICH AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OR AN APPLICATION FOR CERTIFICATION BY ANOTHER TRADE UNION MIGHT BE BROUGHT WOULD BE THE PERIOD FROM MAY 6TH TO JULY 6TH, 1967. IF THE BOARD WERE TO GIVE ITS UNQUALIFIED CONSENT TO THE APPLICATION NOW BEFORE IT, SUCH AN APPLICATION FOR CERTIFICATION OR TERMINATION WOULD BE EFFECTIVELY FORECLOSED.

2. NOTICE OF THE APPLICATION WAS POSTED PURSUANT TO THE REGISTRAR'S DIRECTION, AND THE INTERVENER HAS OBJECTED TO THE APPLICATION. IT IS AGREED THAT THE INTERVENER HAD BEGUN AN ORGANIZATIONAL CAMPAIGN AMONG EMPLOYEES OF THE APPLICANT COMPANY AND THAT IT REPRESENTED EMPLOYEES OF THE COMPANY. THERE IS NO EVIDENCE AS TO THE NUMBER OF EMPLOYEES WHICH THE INTERVENER MIGHT CLAIM AS MEMBERS.

3. COUNSEL FOR THE INTERVENER URGED THE BOARD TO GRANT CONSENT TO THE EARLY TERMINATION OF THE COLLECTIVE AGREEMENT ONLY ON TERMS SIMILAR TO THOSE WHICH THE BOARD IMPOSED IN THE FIRESTONE TIRE & RUBBER COMPANY LIMITED CASE, 54 CLLO 1484. IN THAT CASE, THE BOARD STATED IN PART:

" ... WHERE A COLLECTIVE AGREEMENT IS MADE FOR A TERM OF MORE THAN ONE YEAR AND IT HAS BEEN IN EFFECT FOR AT LEAST THE MINIMUM PERIOD STIPULATED IN SUBSECTION 1 OF SECTION 37 OF THE ACT, THERE WOULD SEEM TO BE NO REASON FOR THE BOARD TO REFUSE CONSENT TO ITS EARLY TERMINATION UNLESS IT IS MADE TO APPEAR THAT ANY PERSON WOULD BE PREJUDICED THEREBY. FOR EXAMPLE, CONSENT MIGHT BE REFUSED IF IT COULD BE SHOWN THAT THE PURPOSE OR EFFECT OF EARLY TERMINATION OF THE AGREEMENT WOULD BE TO DEPRIVE ANOTHER UNION OF A FAIR OPPORTUNITY TO COMPLETE ITS ORGANIZING CAMPAIGN AMONG THE EMPLOYEES BOUND BY THE AGREEMENT WITH A VIEW TO APPLYING FOR CERTIFICATION IN ORDER TO DISPLACE THE ESTABLISHED BARGAINING AGENCY. NOTHING OF THIS SORT CAME TO THE BOARD'S ATTENTION IN THIS CASE."

IN THAT CASE, THERE WAS NO OBJECTION TO THE APPLICATION AND NO SUGGESTION THAT ANOTHER UNION MIGHT BE DEPRIVED OF THE OPPORTUNITY TO ORGANIZE. NEVERTHELESS, THE BOARD IN GRANTING CONSENT TO THE EARLY TERMINATION DID SO BY PROVIDING FOR THE GIVING OF TWO MONTHS' NOTICE OF SUCH TERMINATION. THE EFFECT OF THIS WAS TO SUBSTITUTE AN EARLIER "OPEN SEASON" FOR THAT WHICH WOULD OTHERWISE HAVE PRECEDED THE TERMINATION OF THE AGREEMENT. IN THE INSTANT CASE, OF COURSE, THERE IS OBJECTION TO THE APPLICATION AND THERE IS EVIDENCE OF THE SORT CONTEMPLATED IN THE FIRESTONE DECISION.

4. IT IS TRUE, AS COUNSEL FOR THE COMPANY POINTED OUT, THAT THE INTERVENER CANNOT RELY ON ANY "RIGHT" TO ORGANIZE ESTABLISHED UNDER THE LABOUR RELATIONS ACT SINCE THE ACT MAKES NO REFERENCE TO ORGANIZATIONAL CAMPAIGNS. THERE IS UNDOUBTEDLY, HOWEVER, A RIGHT OF EMPLOYEES TO JOIN THE TRADE UNION OF THEIR CHOICE (SECTION 3) AND FOR THIS RIGHT TO HAVE ANY PRACTICAL VALUE THERE MUST BE THE CONCOMITANT POSSIBILITY OF THE CHOSEN UNIONS APPLYING FOR CERTIFICATION AT A TIME WHEN IT WOULD BE POSSIBLE TO DO SO.

5. COUNSEL FOR THE APPLICANT TRADE UNION URGED THAT THE INTERVENER SHOULD BE REQUIRED TO SHOW A SUBSTANTIAL DEGREE OF SUCCESSFUL ORGANIZATION AMONG EMPLOYEES OF THE COMPANY BEFORE THE BOARD WOULD GIVE SERIOUS CONSIDERATION TO ITS OBJECTION. ON THIS COUNT, IT IS NOTEWORTHY THAT IN THE FIRESTONE CASE THE BOARD PRESERVED AN OPEN SEASON EVEN THOUGH THERE WAS NO EVIDENCE WHATEVER THAT ANY OTHER UNION SOUGHT TO REPRESENT EMPLOYEES. IT IS OUR VIEW THAT THE BOARD OUGHT NOT TO ATTEMPT TO ASSESS THE CHANCES OF SUCCESS OF ANY UNION'S ORGANIZATIONAL CAMPAIGN NOR SHOULD IT ATTEMPT TO ESTABLISH WHAT MIGHT CONSTITUTE A "SUBSTANTIAL DEGREE OF SUCCESSFUL ORGANIZATION" IN ANY PARTICULAR CASE.

6. IN OUR VIEW, IT IS OF VITAL IMPORTANCE THAT AN OPEN SEASON BE PRESERVED AT LEAST WHERE ANY PERSON OR ORGANIZATION HAVING AN INTEREST TAKES OBJECTION TO ITS FORECLOSURE. IT HAS NOT BEEN THE BOARD'S PRACTICE IN RECENT YEARS TO PRESERVE THE OPEN SEASON WHERE NO OBJECTION HAS BEEN TAKEN TO A JOINT APPLICATION OF THIS SORT. THUS, IN A JOINT APPLICATION BY THE INSTANT EMPLOYER AND THE CANADIAN OFFICE EMPLOYEES UNION NO. 159 N.C.C.L., BOARD FILE NO. 12757-66-M, THE BOARD ON APRIL 12TH, 1967, GRANTED CONSENT TO THE TERMINATION EFFECTIVE JANUARY 1ST, 1967 OF A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THOSE PARTIES. WHERE THERE IS OBJECTION TAKEN, HOWEVER, IT IS OUR VIEW THAT FORECLOSURE OF THE OPEN SEASON WOULD CONSTITUTE A DENIAL OF THE RIGHTS OF EMPLOYEES UNDER THE LABOUR RELATIONS ACT.

7. IN A LETTER TO THE BOARD ACCOMPANYING THE APPLICATION, THE APPLICANT TRADE UNION STATED THAT FOLLOWING NOTICE TO EMPLOYEES A RATIFICATION MEETING WAS HELD WITH RESPECT TO A NEW COLLECTIVE AGREEMENT WHICH HAD BEEN NEGOTIATED BY THE PARTIES. SOME 180 EMPLOYEES ATTENDED THE MEETING (THE APPLICANT COMPANY HAS APPROXIMATELY 480 EMPLOYEES) AND A MAJORITY VOTED IN FAVOUR OF RATIFICATION. THE MEETING THEN VOTED UNANIMOUSLY IN SUPPORT OF THE PRESENT APPLICATION. IT WAS NOT ARGUED AT THE HEARING OF THIS MATTER THAT THESE EVENTS RAISED ANY ESTOPPEL AGAINST OBJECTIONS TO THIS APPLICATION. WE WOULD OBSERVE, HOWEVER, THAT IT WOULD REQUIRE CLEAR EVIDENCE OF WAIVER OF EACH EMPLOYEE'S RIGHT TO PARTICIPATE IN PROCEEDINGS LEADING EITHER TO CERTIFICATION OF ANOTHER TRADE UNION OR TERMINATION OF THE INCUMBENT UNION'S BARGAINING RIGHTS FOR SUCH AN OBJECTION, IF TAKEN, TO SUCCEED. EVEN ASSUMING THAT NO QUESTION AS TO THE PROPRIETY OR SUFFICIENCY OF NOTICE TO EMPLOYEES AROSE, IT WOULD NOT BE THE CASE THAT "RATIFICATION" PROCEEDINGS NECESSARILY IMPLIED THE WAIVER OF THEIR RIGHTS UNDER THE ACT BY THOSE EMPLOYEES WHO RECEIVED SUCH NOTICE.

8. HAVING REGARD TO ALL OF THE FOREGOING, THE BOARD CONSENTS TO THE EARLY TERMINATION OF THE COLLECTIVE AGREEMENT NOW IN EFFECT BETWEEN THE PARTIES AS OF JUNE 12TH, 1967, BEING TWO MONTHS FROM THE DATE OF THIS ENDORSEMENT. THE BOARD DIRECTS THAT COPIES OF THIS ENDORSEMENT BE POSTED IN CONSPICUOUS PLACES ON THE PREMISES OF THE EMPLOYER IN ACCORDANCE WITH INSTRUCTIONS TO BE ISSUED BY THE REGISTRAR.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

APRIL 12, 1967.

I DISSENT. I WOULD HAVE GIVEN IMMEDIATE TERMINATION OF THE PRESENTLY EXISTING COLLECTIVE AGREEMENT TO THE JOINT APPLICANTS IN THIS APPLICATION.

IMMEDIATELY PRIOR TO THE MAKING OF THIS JOINT APPLICATION BEFORE THIS BOARD, THE APPLICANTS HAD HELD A SERIES OF MEETINGS, AND AGREEMENT WAS REACHED ON THE TERMS OF A NEW COLLECTIVE AGREEMENT. THE APPLICANT UNION CALLED A SPECIAL MEETING OF THE EMPLOYEES FOR THE PURPOSE OF CONSIDERING THE NEW AGREEMENT. NOTICES ANNOUNCING THE HOLDING OF THE SPECIAL MEETING TO CONSIDER THE TERMS OF SETTLEMENT WERE POSTED IN THE PLANT IN EIGHT CONSPICUOUS LOCATIONS FOR A PERIOD OF SIX DAYS TO ENSURE ADEQUATE NOTIFICATION OF ALL EMPLOYEES.

A GOODLY NUMBER OF EMPLOYEES ATTENDED AT SUCH MEETING AND FULL DETAILS OF THE NEW COLLECTIVE AGREEMENT WERE EXPLAINED TO THE MEMBERS PRESENT. A VOTE WAS HELD BY SECRET BALLOT AND A LARGE MAJORITY VOTED APPROVING OF THE TERMS OF SETTLEMENT.

FOLLOWING THE ANNOUNCEMENT OF THE RESULT OF THE VOTE, A MOTION WAS MADE AND SECONDED INSTRUCTING THE EXECUTIVE COMMITTEE OF THE UNION TO APPLY TO THIS BOARD FOR PERMISSION TO TERMINATE THE EXISTING COLLECTIVE AGREEMENT SO THAT THE NEW AGREEMENT MIGHT BE MADE EFFECTIVE IMMEDIATELY. THIS MOTION WAS UNANIMOUSLY APPROVED BY THE MEMBERS PRESENT.

SURELY THIS IS THE METHOD BY WHICH MOST AGREEMENTS ARE RATIFIED AND SURELY ALSO THIS BOARD HAS GIVEN RECOGNITION TO SUCH RATIFICATIONS IN THE PAST.

BY DECLINING TO GRANT THE IMMEDIATE TERMINATION REQUESTED BY THE JOINT APPLICANTS, IT IS MY OPINION THAT THIS BOARD IS DECLINING TO FOLLOW THE WISHES OF THE INDIVIDUAL EMPLOYEES AND IS FRUSTRATING THEIR DESIRES IN THIS ISSUE. THESE EMPLOYEES HAVE BEEN GIVEN EVERY OPPORTUNITY TO INDICATE THOSE WISHES, AND HAVE DONE SO IN A DEMOCRATIC WAY. THEY HAVE SPOKEN. WHY THEN SHOULD WE, ON THIS BOARD, FRUSTRATE THE EXERCISE OF THEIR DEMOCRATIC CHOICE?

IT IS TRUE THAT THE INTERVENER HAS ALLEGED THAT IT HAD BEGUN AN ORGANIZATIONAL CAMPAIGN AMONG THE EMPLOYEES OF THE COMPANY, BUT IT DID NOT SEE FIT TO ENTER ANY EVIDENCE AS TO THE EXTENT OF SUCH CAMPAIGN OR TO THE NUMBERS OF ITS MEMBERS, EXCEPT FOR AN ASSERTION BY ITS COUNSEL THAT SUCH A CAMPAIGN HAD COMMENCED AND THAT IT REPRESENTED EMPLOYEES OF THE COMPANY.

IN THE FIRESTONE TIRE & RUBBER COMPANY LIMITED CASE, 54 C.L.L.C. 1484, WHICH DEALT WITH A WAGE RE-OPENER CLAUSE, THE BOARD INDICATED THAT IT MIGHT REFUSE TO GRANT CONSENT TO THE EARLY TERMINATION OF A COLLECTIVE AGREEMENT IF IT APPEARED THAT PREJUDICE MIGHT RESULT THEREFROM.

SURELY THE BOARD IS ENTITLED TO RECEIVE, AND THE EMPLOYEES ARE ENTITLED TO EXPECT, FAR MORE CONCRETE EVIDENCE OF THE INTERVENER'S STRENGTH THAN IT RECEIVED ON THIS APPLICATION BEFORE SUCH APPLICATION IS DENIED. I AM OF THE OPINION THAT IN ORDER TO SUCCEED, THE INTERVENER MUST, AT THE VERY LEAST, SHOW A REAL HARM AND INJURY TO ITS RIGHTS, IF THE APPLICATION WERE GRANTED. TO DO OTHERWISE, I BELIEVE, WOULD BE TO THWART THE WISHES OF THE MAJORITY, WHO HAVE DEMOCRATICALLY EXERCISED THEIR CHOICE.

ACCORDINGLY, I WOULD HAVE GRANTED THE REQUEST FOR IMMEDIATE EARLY TERMINATION OF THE PRESENTLY EXISTING COLLECTIVE AGREEMENT.

IN PASSING, MAY I SAY THAT THIS JOINT APPLICATION WAS MADE ON THE 1ST DAY OF FEBRUARY, 1967. THE CASE WAS HEARD ON THE 6TH DAY OF MARCH, 1967. THE DENIAL OF SUCH APPLICATION IS BEING GIVEN ON THE 12TH DAY OF APRIL, 1967. IF THE MAJORITY OF THIS BOARD IS TO DENY THE APPLICATION, IT IS MY OPINION THAT THE EARLY TERMINATION OF THE COLLECTIVE AGREEMENT SHOULD BE GIVEN AT A TIME LESS THAN THE TWO MONTHS SET OUT IN THE MAJORITY DECISION.

INDEXED ENDORSEMENT - SECTION 47(A)

12785-66-M: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. CANTEEN OF CANADA LIMITED; WALFOODS LIMITED; RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 414, AFL:CIO:CLC (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: W. KITCHING FOR THE APPLICANT, H. A. MACINTOSH AND K. C. RONAN FOR CANTEEN OF CANADA LIMITED. A. GLEASON AND C. C. DAHMER FOR RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 414, AFL:CIO:CLC, AND NO ONE APPEARING FOR WALFOODS LIMITED.

DECISION OF THE BOARD: APRIL 12, 1967.

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3. THE APPLICANT WAS BARGAINING AGENT FOR EMPLOYEES OF WALFOODS LIMITED, A FOOD CATERING FIRM, AT THE CAFETERIA AT ORENDA LIMITED AT MALTON. A COLLECTIVE AGREEMENT MADE BETWEEN THE APPLICANT AND WALFOODS LIMITED WITH RESPECT TO EMPLOYEES WORKING AT ORENDA LIMITED PROVIDES FOR ITS TERM TO RUN UNTIL DECEMBER 31ST, 1967, SUBJECT TO NOTICE.

4. WALFOODS LIMITED AND CANTEEN OF CANADA LIMITED, TWO OF THE RESPONDENTS HEREIN, ARE WHOLLY OWNED SUBSIDIARIES OF AUTOMATIC CANTEEN OF CANADA LIMITED. EACH COMPANY IS ENGAGED IN WHAT MAY BE DESCRIBED IN GENERAL TERMS AS FOOD CATERING, BUT THEY USE DISTINCTLY DIFFERENT METHODS OF OPERATING THEIR RESPECTIVE BUSINESSES. CANTEEN OF CANADA LIMITED USES VENDING MACHINES, WHEREAS WALFOODS LIMITED OPERATES WHAT IS CALLED A "MANUAL FOOD SERVICE" AND DOES NOT USE VENDING MACHINES.

5. UNTIL JANUARY 30TH, 1967, WALFOODS LIMITED PROVIDED A MANUAL FOOD SERVICE TO ORENDA LIMITED AT MALTON UNDER CONTRACT WITH THAT COMPANY. ORENDA



LIMITED TERMINATED THIS CONTRACT ON OR ABOUT JANUARY 27TH, 1967, HAVING DECIDED TO REPLACE THE MANUAL SERVICE WITH AUTOMATIC VENDING MACHINES. ON JANUARY 30TH, 1967, CANTEEN OF CANADA LIMITED ENTERED INTO A CONTRACT WITH ORENDA LIMITED TO PROVIDE VENDING MACHINE SERVICE FOR THE LATTER'S CAFETERIA. WALFOODS LIMITED CONTINUES TO ENGAGE IN MANUAL SERVICE CAFETERIA OPERATIONS AT SEVERAL DIFFERENT LOCATIONS.

6. FOLLOWING CANCELLATION OF ITS CONTRACT AT ORENDA, WALFOODS LIMITED LAID OFF ALL OF ITS EMPLOYEES AT ORENDA. CANTEEN OF CANADA LIMITED INTERVIEWED AND HIRED THREE FORMER WALFOODS LIMITED EMPLOYEES TO WORK AS HOSTESSES AT THE ORENDA CAFETERIA. THESE THREE EMPLOYEES BECAME MEMBERS OF THE BARGAINING UNIT AT CANTEEN OF CANADA LIMITED REPRESENTED BY RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 414, AFL:CIO:CLC. THERE ARE SOME 414 EMPLOYEES IN THAT UNIT.

7. HAVING REGARD TO ALL THE EVIDENCE AND WHAT WAS ALLEGED BY BOTH PARTIES, THE BOARD FINDS THAT WALFOODS LIMITED AND CANTEEN OF CANADA LIMITED ARE INDEPENDENT CORPORATE ENTITIES AND THAT THE TRANSACTIONS ABOVE DESCRIBED DO NOT CONSTITUTE A SALE WITHIN THE MEANING OF SECTION 47A OF THE ACT. THE APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - SECTION 79(2)

11802-66-M: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, LOCAL 743 (APPLICANT) v. DUNLOP CANADA LIMITED (WHITBY) (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: L. A. MACLEAN, PAUL F. SPENCER, E. A. JARVIS, LLOYD N. BURTON, CARL W. FITZGERALD AND E. TAYLOR FOR THE APPLICANT, AND C. A. MORLEY AND J. J. RANSON FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 10, 1967.

1. THIS IS A REQUEST FOR RELIEF PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT. ON JUNE 3RD, 1964, THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE BOARD'S ENDORSEMENT DIRECTING THE ISSUE OF A CERTIFICATE READ IN PART AS FOLLOWS:-

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT SECTION SUPERVISORS, PERSONS ABOVE THE RANK OF SECTION SUPERVISOR, PROFESSIONAL ENGINEERS EMPLOYED IN A PROFESSIONAL CAPACITY, SENIOR DRAUGHTSMAN, PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENTS, PERSONS EMPLOYED IN THE SALARIES AND PENSIONS DEPARTMENT, AUDITORS, SALESMEN AND SALES TRAINEES, TIME STUDY AND METHODS

ANALYSTS, SYSTEMS ANALYSTS, PROGRAMER ANALYSTS, SENIOR PROGRAMMERS, PROGRAMMER, REGISTERED NURSES, COMPOUNDS ENGINEER, SECURITY GUARDS, SECRETARIES TO DIVISION AND DEPARTMENT HEADS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE DIVISION AND DEPARTMENT HEADS CONTEMPLATED IN THE DESCRIPTION ARE THE FOLLOWING: THE PRESIDENT, VICE-PRESIDENT MANUFACTURING, SECRETARY-TREASURER, GENERAL SALES MANAGER, MANAGER OF THE TECHNICAL DEPARTMENT, ADVERTISING MANAGER, CREDIT MANAGER, PRODUCTION SUPERINTENDENT AND THE CHIEF ENGINEER. STENOGRAPHERS EMPLOYED IN THE SYSTEMS DEPARTMENT ARE INCLUDED IN THE BARGAINING UNIT. THE SAFETY OFFICER IS A MEMBER OF THE PERSONNEL DEPARTMENT AND IS EXCLUDED FROM THE BARGAINING UNIT.

2. IN NOVEMBER, 1964, THE PARTIES ENTERED INTO A COLLECTIVE AGREEMENT (EXHIBIT 1) IN WHICH THE APPLICANT WAS RECOGNIZED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES DESCRIBED AS IN PARAGRAPH (3) OF THE BOARD'S ENDORSEMENT SET OUT ABOVE. THE APPLICANT NOW ASSERTS THAT QUESTIONS HAVE ARISEN DURING THE COURSE OF BARGAINING FOR A RENEWAL OF THIS AGREEMENT, AS TO WHETHER CERTAIN PERSONS ARE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THE APPLICANT SEEKS THE BOARD'S DETERMINATION OF SUCH QUESTIONS WITH RESPECT TO A NUMBER OF PERSONS WHOSE NAMES HAVE BEEN FILED WITH THE BOARD. THE RESPONDENT RAISES A NUMBER OF OBJECTIONS TO THE BOARD'S PROCEEDING TO MAKE SUCH A DETERMINATION.

3. THE FIRST OBJECTION RAISED BY THE RESPONDENT IS THAT, IN FACT, NO QUESTION HAS ARISEN OF THE SORT CONTEMPLATED BY SECTION 79(2). A GREAT DEAL OF EVIDENCE WAS PRESENTED TO THE BOARD RELATING TO THE COURSE OF NEGOTIATIONS BETWEEN THE PARTIES. IN OUR VIEW, NO PURPOSE WOULD BE SERVED BY SETTING OUT A LENGTHY ANALYSIS OF THIS EVIDENCE. IT IS SUFFICIENT TO SAY THAT QUESTIONS HAVE ARISEN DURING THE COURSE OF BARGAINING AS TO WHETHER CERTAIN PERSONS ARE EMPLOYEES AND THAT THE BOARD WILL, SUBJECT TO OUR RULINGS ON OTHER OBJECTIONS, APPOINT AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF SUCH PERSONS. INDEED, THE APPLICATION ITSELF IS EVIDENCE OF THE QUESTION HAVING ARISEN. SEE THE MANNESMANN TUBE COMPANY, LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY, 1966, P. 136.

4. THE RESPONDENT FURTHER OBJECTED THAT THE APPLICANT HAD AGREED NOT TO SUBMIT ANY QUESTION AS TO THE EMPLOYMENT STATUS OF THE PERSONS CONCERNED TO THE BOARD, AND THAT THE APPLICANT WAS THUS ESTOPPED FROM BRINGING THIS APPLICATION. AS TO THIS OBJECTION, IT IS SUFFICIENT TO SAY THAT ANY SUCH AGREEMENT MUST BE CLEARLY PROVED, AND THAT SUCH PROOF HAS NOT BEEN GIVEN IN THE INSTANT

CASE. IT IS TRUE THAT AT ONE STAGE IN THE NEGOTIATIONS, THE PARTIES HAD CONDITIONALLY AGREED TO SUBMIT SUCH QUESTIONS TO THE BOARD, AND THAT, AT A LATER STAGE THIS CONDITIONAL AGREEMENT WAS WITHDRAWN. THIS IS A VERY DIFFERENT THING FROM A CLEAR AGREEMENT NOT TO SUBMIT THE QUESTIONS TO THE BOARD.

5. COUNSEL FOR THE APPLICANT IN TURN SUBMITTED THAT THE RESPONDENT WAS, BY ITS CONDUCT, ESTOPPED FROM DENYING THE AGREEMENT OF THE PARTIES TO SUBMIT THIS QUESTION TO THE BOARD. AS TO THIS, IT IS SUFFICIENT TO SAY THAT THE AGREEMENT IN QUESTION WAS CONDITIONAL UPON AGREEMENT WITH RESPECT TO ALL OTHER MATTERS IN ISSUE IN THE NEGOTIATIONS BETWEEN THE PARTIES. SUCH AGREEMENT HAS NOT YET BEEN REACHED. WE CANNOT CONCLUDE THEREFORE THAT THE COMPANY IS ESTOPPED FROM DENYING ANY ALLEGED AGREEMENTS OF THE PARTIES TO SUBMIT THIS ISSUE TO THE BOARD. HOWEVER, EVEN IF WE WERE TO CONCLUDE THAT THERE WAS NO AGREEMENT TO SUBMIT THIS MATTER TO THE BOARD, WE WOULD, FOR THE REASONS STATED EARLIER AND SUBJECT TO OUR RULING ON THE REMAINING GROUND OF OBJECTION, APPOINT AN EXAMINER IN THIS CASE.

6. THE MAIN GROUND OF OBJECTION RAISED TO THE APPLICATION IS THAT THE PERSONS IN QUESTION ARE EXCLUDED FROM THE BARGAINING UNIT. THIS ISSUE HAS BEEN THE SUBJECT OF DISCUSSION BY THE BOARD IN A NUMBER OF CASES. THE BOARD HAS FREQUENTLY STATED THAT THE QUESTION WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT AND THE QUESTION WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE LABOUR RELATIONS ACT ARE TWO SEPARATE QUESTIONS, AND THAT THE FORMER IS PROPERLY ONE FOR DETERMINATION UNDER THE GRIEVANCE AND ARBITRATION PROCEDURE PROVIDED FOR IN THE COLLECTIVE AGREEMENT WHEREAS THE LATTER IS ONE THAT FALLS WITHIN THE JURISDICTION OF THE BOARD. A DISTINCTION MAY ALSO BE DRAWN BETWEEN QUESTIONS ARISING DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT AND QUESTIONS ARISING IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT. IN ALL CASES THE BOARD MUST BE SATISFIED THAT THE DETERMINATION BY THE BOARD WOULD SERVE A USEFUL PURPOSE WITH RELATION TO EXISTING BARGAINING RIGHTS. THUS, WHERE SUCH A QUESTION ARISES DURING THE OPERATION OF A COLLECTIVE AGREEMENT, THE BOARD WILL ENTERTAIN THE MATTER, EVEN THOUGH THE REAL PURPOSE OF THE APPLICATION MIGHT RELATE TO THE PARTIES' POSITION WITH RESPECT TO OTHER PROCEEDINGS. SEE THE STEEL COMPANY OF CANADA LTD. HILTON WORKS CASE, O.L.R.B. MONTHLY REPORT, JANUARY, 1966, P. 760. THE ULTIMATE ISSUE IN SUCH CASES IS THE EXTENT OF PRESENTLY EXISTING BARGAINING RIGHTS, AND THE BOARD IS NATURALLY CONCERNED TO ASSIST THE PARTIES IN SUCH A MATTER. WHERE THE QUESTION ARISES IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT, THE BOARD AGAIN WOULD BE PREPARED TO ASSIST THE PARTIES IN MATTERS RELATING TO THE DELINEATION OF PRESENTLY EXISTING BARGAINING RIGHTS, ALTHOUGH IT WOULD NOT, AS THE DAVIS LUMBER COMPANY LIMITED CASE, 59 C.L.L.C. 1793, INDICATES DO SO IN CIRCUMSTANCES WHERE AN UNFAIR ADVANTAGE WOULD BE GIVEN TO ONE OR OTHER OF THE PARTIES. INDEED, AS THE ENDORSEMENT OF THE RECORD IN THIS MATTER, DATED SEPTEMBER 14TH, 1966 INDICATES, THE PRESENT APPLICATION CANNOT SUCCEED WITH RESPECT TO THOSE PERSONS WHO HAVE BEEN EXCLUDED FROM THE BARGAINING UNIT.

7. IT IS CLEAR, ON THE EVIDENCE AND FROM THE TERMS OF THE APPLICATION ITSELF THAT THIS APPLICATION, EXCEPT IN THE INSTANCES SET OUT BELOW, IS NOT IN AID OF THE DELINEATION OF EXISTING BARGAINING RIGHTS, BUT IS RATHER FOR THE ULTIMATE PURPOSE OF EXPANDING THE BARGAINING UNIT BY INCLUDING THEREIN PERSONS WHOSE JOB CLASSIFICATIONS HAVE PREVIOUSLY BEEN EXCLUDED FROM THE UNIT.

THE REQUEST ORIGINALLY MADE TO THE RESPONDENT BY THE APPLICANT WAS FOR THE INCLUSION OF CERTAIN LISTED PERSONS IN THE BARGAINING UNIT. A GRIEVANCE WAS FILED OVER THE EXCLUSION OF SOME OF THESE PERSONS FROM THE UNIT, BUT THE MATTER WAS NOT PROCEEDED WITH, THE ISSUE BEING TREATED AS ONE FOR NEGOTIATIONS. IN OUR VIEW, THIS IS NOT A CASE IN WHICH THE BOARD'S DETERMINATION OF THE QUESTION WHICH HAS ARISEN WOULD SERVE A USEFUL PURPOSE RELATING TO EXISTING BARGAINING RIGHTS.

8. THERE ARE, HOWEVER, CERTAIN PERSONS WHOSE EXCLUSION FROM THE EXISTING BARGAINING UNIT IS NOT APPARENT. THESE ARE THE FOLLOWING: D. STEWART, K. STEENBURGH, J. GURNEY AND P. RIEL. IT DOES NOT APPEAR THAT G. ATKIN WAS EXCLUDED FROM THE BARGAINING UNIT, BUT THIS PERSON HAS LEFT THE EMPLOY OF THE RESPONDENT. IT WOULD APPEAR THAT THE SUCCESSOR TO G. ATKIN WOULD PROPERLY BE MADE THE SUBJECT OF EXAMINATION IN THESE PROCEEDINGS, ON A MOTION TO THAT EFFECT. THE OTHER EMPLOYEES REFERRED TO IN THE APPLICATION APPEAR TO THE BOARD TO COME WITHIN THE CATEGORIES EXCLUDED FROM THE BARGAINING UNIT, AND THE BOARD WILL NOT APPOINT AN EXAMINER WITH RESPECT TO THOSE PERSONS.

9. IT SHOULD BE ADDED THAT OUR DETERMINATION THAT A PERSON OCCUPIES ONE OF THE EXCLUDED CATEGORIES IS MADE FOR THE PURPOSE OF THIS APPLICATION ONLY AND IS NOT FINAL AND BINDING FOR OTHER PURPOSES. THUS, IF AN ARBITRATOR OR BOARD OF ARBITRATION WERE TO FIND THAT ONE OF THE PERSONS AFFECTED BY THIS APPLICATION DID NOT IN FACT OCCUPY ONE OF THE EXCLUDED CATEGORIES, THEN THE BOARD WOULD APPOINT AN EXAMINER WITH RESPECT TO SUCH PERSON. THE BOARD DOES NOT PROPOSE, HOWEVER, TO PERFORM THE FUNCTION OF AN ARBITRATOR OR BOARD OF ARBITRATION IN THIS REGARD.

10. THE APPLICANT HAS ALLEGED THAT THE DUTIES AND RESPONSIBILITIES OF CERTAIN OF THE EMPLOYEES NAMED BY IT HAVE CHANGED. IF IT IS IN FACT THE CASE THAT SUCH DUTIES HAVE CHANGED MATERIALLY, THEN IT MAY BE THAT THE QUESTION OF THEIR EMPLOYMENT STATUS SHOULD BE CONSIDERED BY THE BOARD AS AN AID TO THE PARTIES IN THE DELINEATION OF THE EXISTING BARGAINING UNIT. AS WAS STATED IN THE EARLIER ENDORSEMENT OF THE RECORD IN THIS MATTER, THE BOARD WILL CONSIDER THE NATURE AND EXTENT OF SUCH CHANGES.

11. FOLLOWING THE FIRST HEARING IN THIS MATTER, THE APPLICANT MADE THE ALLEGATION THAT THE DUTIES OF THE FOLLOWING PERSONS HAD CHANGED: H. BEAVER, K. STEENBURGH, J. GURNEY, P. RIEL, G. ATKIN, LOISE WICKETT, AND H. DICKSON.

12. AT THE HEARING IN THIS MATTER, HELD ON FEBRUARY 10TH, 1967, THE APPLICANT MADE THE ALLEGATION THAT THE DUTIES OF THE FOLLOWING PERSONS HAD CHANGED: P. ADDINGTON, F. BARR, H. HUFF, H. BEAVER, H. DICKSON, J. HENDERSON, C. WAHRER, J. ROSS, J. TRAYNOR, L. KNIGHT, D. BROMLEY, A. NINABER, AND A. KHAN.

13. ALTHOUGH THE DIFFERENCE IN THESE LISTS WAS NOT THE SUBJECT OF COMMENT AT THE HEARING, WE CAN ONLY CONCLUDE THAT THE ALLEGATIONS MADE ORALLY BY COUNSEL AT THE LAST HEARING OF THIS MATTER, CONSTITUTED HIS BEST CONSIDERATION OF THE MATTER, AND THE BOARD WILL GRANT RELIEF, AS ABOVE INDICATED, WITH RESPECT TO THE PERSONS THUS REFERRED TO.

14. MR. J. R. HENDERSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE FOLLOWING MATTERS:



1. THE DUTIES AND RESPONSIBILITIES OF D. STEWART, K. STEENBURGH, J. GURNEY AND P. RIEL.

2. THE NATURE AND EXTENT OF ANY CHANGES IN THE DUTIES AND RESPONSIBILITIES OF P. ADDINGTON, F. BARR, H. HUFF, H. BEAVER, H. DICKSON, J. HENDERSON, C. WAHRER, J. ROSS, J. TRAYNOR, L. KNIGHT, D. BROMLEY, A. NINABER, AND A. KHAN, SINCE THE MAKING OF THE COLLECTIVE AGREEMENT.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12554-66-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. POWER CONTROLS DIVISION - MIDLAND-ROSS OF CANADA LIMITED (RESPONDENT) v. THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 568 (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

DECISION OF THE BOARD: APRIL 18, 1967.

1. THE APPLICANT HAS REQUESTED RECONSIDERATION OF THE BOARD'S DECISION IN THIS MATTER DATED MARCH 22ND, 1967.

2. IN OUR VIEW, THE APPLICANT'S REQUEST SETS OUT NO NEW EVIDENCE OR ARGUMENTS WHICH WERE NOT AVAILABLE TO IT AT THE TIME OF THE HEARING. THE MATTERS NOW RAISED BY THE APPLICANT WERE CONSIDERED BY THE BOARD IN ARRIVING AT ITS DECISION.

3. THE APPLICANT'S REQUEST FOR RECONSIDERATION IS DENIED.

12671-66-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 48 (APPLICANT) v. CRESTILE LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: APRIL 26, 1967.

1. THE RESPONDENT BY LETTER DATED APRIL 13TH, 1967 HAS REQUESTED THAT THE BOARD RECONSIDER THE FINDING WHICH IT MADE IN PARAGRAPH 15 OF ITS DECISION DATED APRIL 7TH, 1967 THAT THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT WAS IN EFFECT FOR A PERIOD OF ONE YEAR FROM MAY 5TH, 1965.

2. WHILE THE TERMINATION PROVISION OF THE COLLECTIVE AGREEMENT IN THE COBALT FOUNDRY LIMITED CASE IS BY NO MEANS IDENTICAL TO THE TERMINATION PROVISION OF THE COLLECTIVE AGREEMENT ENTERED INTO BY THE APPLICANT AND THE RESPONDENT ON MAY 5TH, 1965 IN THE INSTANT CASE, WE FIND AS THE BOARD DID IN THE EARLIER CASE, FOR THE REASONS SET OUT IN PARAGRAPH 15 OF OUR DECISION OF APRIL 7TH, 1967, THAT THE COLLECTIVE AGREEMENT WAS TO REMAIN IN EFFECT FOR AN UNSPECIFIED PERIOD. THE ARGUMENTS ADVANCED BY THE RESPONDENT IN ITS LETTER OF

APRIL 13TH, 1967 DO NOT PERSUADE US THAT THERE IS ANY REASON FOR THE BOARD TO VARY OR REVOKE ITS FINDING CONTAINED IN PARAGRAPH 15 THAT THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT EXPIRED ON MAY 4TH, 1966.

3. THE REQUEST OF THE RESPONDENT, ACCORDINGLY, IS DENIED.

12676-66-R: UNION OF NURSING ASSISTANTS (APPLICANT) v. ESSEX HEALTH ASSOCIATION  
(RESPONDENT) v. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL UNION #210  
(INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES  
AND H. F. IRWIN.

DECISION OF THE BOARD: APRIL 27, 1967.

1. COUNSEL FOR THE APPLICANT IN THIS MATTER, BY LETTER DATED APRIL 20TH, 1967, HAS REQUESTED THE BOARD TO SUPPLY THE APPLICANT WITH A COPY OF AN EXAMINER'S REPORT WHICH WAS PREPARED IN CONNECTION WITH THE BROCKVILLE GENERAL HOSPITAL CASE, BOARD FILE NO. 11456-65-R. IT WOULD APPEAR FROM THE APPLICANT'S LETTER THAT MR. LEVINSON, THE SOLICITOR FOR THE INTERVENER IN THIS CASE, HAS IN HIS POSSESSION A COPY OF THE EXAMINER'S REPORT THE APPLICANT NOW SEEKS AND IT IS FOR THIS REASON THAT THE APPLICANT FEELS ENTITLED TO RECEIVE A COPY OF THE REPORT FROM THE BOARD.

2. IT SHOULD BE NOTED THAT IF MR. LEVINSON HAS A COPY OF THE EXAMINER'S REPORT IN HIS POSSESSION THAT MR. LEVINSON DID NOT RECEIVE THE COPY OF THE REPORT FROM THE BOARD, AND THE BOARD DOES NOT KNOW FROM WHOM MR. LEVINSON OBTAINED HIS COPY. IT IS NOT THE BOARD'S PRACTICE TO SUPPLY COPIES OF EXAMINER'S REPORTS TO PERSONS OTHER THAN THE PARTIES TO THE PROCEEDINGS FOR WHICH THE REPORT WAS PREPARED. SINCE THE APPLICANT IN THE INSTANT PROCEEDINGS IS A STRANGER TO THE BROCKVILLE GENERAL HOSPITAL CASE, THE APPLICANT IS THEREFORE NOT ENTITLED TO RECEIVE A COPY OF THE EXAMINER'S REPORT.

3. THE EXAMINER'S REPORT IN THE BROCKVILLE GENERAL HOSPITAL CASE IS NOT EVIDENCE BEFORE THE BOARD IN THE INSTANT CASE.

4. FOR SIMILAR REASONS THAT THE BOARD DOES NOT GIVE ADVISORY OPINIONS TO ONE OF THE PARTIES TO A PROCEEDING BEFORE IT, THE BOARD WILL NOT SUPPLY ONE OF THE PARTIES WITH THE TYPE OF MATERIAL REQUESTED BY THE APPLICANT IN THIS CASE.

5. THE APPLICANT'S REQUEST IN THIS CASE IS THEREFORE DENIED.

12897-66-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. N. W. CLAYTON SHEET  
METAL AND HEATING CO. LTD. (RESPONDENT) v. SHEET METAL WORKERS' INTERNATIONAL  
ASSOCIATION, LOCAL UNION 562 (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: APRIL 28, 1967.

1. THE RESPONDENT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED APRIL 17TH, 1967. THE GROUND UPON WHICH REQUEST IS MADE IS ONE THAT WAS ALLUDED TO AT THE HEARING AND IS TO THE EFFECT THAT THE APPLICANT UNION IS NOT A "CONSTRUCTION INDUSTRY" UNION AND WOULD BE UNABLE TO SUPPLY SHEET METAL WORKERS TO THE RESPONDENT AND SO SHOULD NOT BE CERTIFIED.

2. AS INDICATED, THIS ARGUMENT WAS PART OF THE RESPONDENT'S SUBMISSION AT THE HEARING AND WAS HEARD BY THE BOARD AT THAT TIME. THE BOARD'S DECISION WAS BASED PRIMARILY UPON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT UNION, AND IS IN CONFORMITY WITH THE PROVISIONS OF SECTION 3 OF THE LABOUR RELATIONS ACT.

3. THE RESPONDENT'S REQUEST IS ACCORDINGLY DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

12879-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MCDougALL-WALBRIDGE-ALDINGER (ONTARIO) LIMITED (RESPONDENT).

4. THE APPLICANT APPLIED FOR A BARGAINING UNIT OF TRUCK DRIVERS AND THE QUESTION THAT HAS ARISEN IS WHETHER TWO PERSONS ALLEGED BY THE APPLICANT TO BE TRUCK DRIVERS MAY BE SO CLASSIFIED. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES OF THE TWO EMPLOYEES AND ON THE BASIS OF THE EVIDENCE CONTAINED IN HIS REPORT WE ARE SATISFIED THAT THEY FALL INTO THE ABOVE DESCRIBED BARGAINING UNIT. HOWEVER THE BOARD WISHES TO MAKE IT CLEAR THAT THE UNIT IS NOT INTENDED TO COVER EMPLOYEES WHO MAY ON OCCASION DRIVE A TRUCK. FOLLOWING OUR USUAL PRACTICE IN SUCH CASES ONLY EMPLOYEES WHO ARE OCCUPIED IN DRIVING OVER FIFTY PER CENT OF THEIR TIME WOULD BE INCLUDED IN THE BARGAINING UNIT. SEE JOHNSON-KIEWIT SUBWAY CORPORATION, O.L.R.B. MONTHLY REPORT JUNE 1966, P. 182. FURTHERMORE, SUPERVISORY PERSONNEL ENGAGED IN DRIVING TRUCKS WOULD NOT BE INCLUDED IN THE UNIT IF OTHERWISE EXCLUDED BY THE EXCLUSION CLAUSE IN THE BARGAINING UNIT. FINALLY, IT SHOULD BE POINTED OUT THAT THIS IS AN APPLICATION UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT AND NOT ALL TRUCK DRIVERS EMPLOYED BY THE RESPONDENT WOULD NECESSARILY BE INCLUDED IN THE UNIT. SOME GUIDE LINES IN THIS RESPECT ARE SET OUT IN CEDARHURST PAVING Co. LIMITED, O.L.R.B. MONTHLY REPORT DECEMBER, 1964, P. 442.

(APRIL 26, 1967).

12921-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 1036 (APPLICANT) V. W. A. MCDougALL LIMITED (RESPONDENT).

5. THE BOARD FINDS FURTHER THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF MANITOULIN EXCEPT THAT PORTION OF THE DISTRICT OF MANITOULIN WITHIN A THIRTY-FIVE MILE RADIUS OF THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. (APRIL 11, 1967).

12946-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL  
UNION 2173 (APPLICANT) v. WELCON LTD. (RESPONDENT).

7. THE GEOGRAPHIC AREA PROPOSED BY THE APPLICANT IS THE COUNTY OF DUFFERIN. THIS IS THE FIRST TIME THAT THE BOARD HAS BEEN CALLED ON TO CONSIDER THE APPROPRIATENESS OF SUCH AN AREA. IN THESE CIRCUMSTANCES AND AS A PURELY INTERIM MEASURE, THE BOARD THEREFORE FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF DUFFERIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(APRIL 12, 1967).



STATISTICAL TABLES FOR APRIL 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	APRIL 1ST MONTH OF FISCAL YEAR 1967	1967-68	1966-67
I. CERTIFICATION	84	84	86
II. DECLARATION TERMINATING BARGAINING RIGHTS	8	8	5
III. DECLARATION OF SUCCESSOR STATUS	-	-	-
IV. DECLARATION THAT STRIKE UNLAWFUL	3	3	3
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	16	16	17
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	6	5
VIII. MISCELLANEOUS	<u>2</u>	<u>2</u>	<u>4</u>
TOTAL	<u>119</u>	<u>119</u>	<u>120</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	APRIL 1ST MONTH OF FISCAL YEAR 1967	1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	91	91	54

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

		NUMBER DISPOSED OF		
		APRIL 1ST MONTH OF FISCAL YEAR		
		1967	1967-68	1966-67
I.	CERTIFICATION	91	91	66
II.	DECLARATION TERMINATING BARGAINING RIGHTS	4	4	4
III.	DECLARATION OF SUCCESSOR STATUS	1	1	-
IV.	DECLARATION THAT STRIKE UNLAWFUL	4	4	3
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI.	CONSENT TO PROSECUTE	5	5	4
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	17	6
VIII.	MISCELLANEOUS	<u>6</u>	<u>6</u>	<u>5</u>
TOTAL		<u>128</u>	<u>128</u>	<u>88</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>APRIL 1ST MONTH FISCAL YR.</u>			<u>APRIL 1ST MONTH FISCAL YR.</u>		
	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
<u>I. CERTIFICATION</u>						
GRANTED	74	74	45	2015	2015	925
DISMISSED	12	12	13	1292	1292	900
WITHDRAWN	<u>5</u>	<u>5</u>	<u>8</u>	<u>72</u>	<u>72</u>	<u>195</u>
TOTAL	<u>91</u>	<u>91</u>	<u>66</u>	<u>3379</u>	<u>3379</u>	<u>2020</u>
<u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	3	3	3	81	81	212
DISMISSED	1	1	1	6	6	30
WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	<u>4</u>	<u>4</u>	<u>4</u>	<u>87</u>	<u>87</u>	<u>242</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>APRIL 1ST MONTH OF FISCAL YR.</u>		
		<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	<u>4</u>	<u>4</u>	<u>3</u>
	TOTAL	<u>4</u>	<u>4</u>	<u>3</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>-</u>	<u>-</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	<u>5</u>	<u>5</u>	<u>4</u>
	TOTAL	<u>5</u>	<u>5</u>	<u>4</u>



TABLE V.

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED  
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	APRIL 1ST MONTH OF FISCAL YR.		
	1967	1967-68	1966-67
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	1	1
POST-HEARING VOTE	6	6	3
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	1	-
POST-HEARING VOTE	3	3	4
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>11</u>	<u>11</u>	<u>8</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED  
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	APRIL 1ST MONTH OF FISCAL YR.		
	1967	1967-68	1966-67
*RESPONDENT UNION SUCCESSFUL	1	1	-
RESPONDENT UNION UNSUCCESSFUL	<u>3</u>	<u>3</u>	<u>3</u>
TOTAL	<u>4</u>	<u>4</u>	<u>3</u>

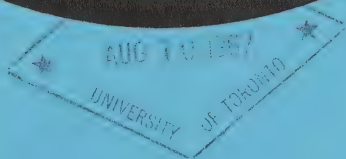
\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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ONTARIO

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ONTARIO LABOUR RELATIONS BOARD



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD DURING MAY 1967

BARGAINING AGENTS CERTIFIED DURING MAY

NO VOTE CONDUCTED

12693-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,  
LOCAL 527 (APPLICANT) V. ROLAND LEFEBVRE LATHING LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT  
IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP),  
RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS  
ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

12972-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE  
UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. PETER AUSTIN  
MANUFACTURING COMPANY, DIVISION OF KELTON CORPORATION LIMITED.  
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE  
AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR  
FORELADY, AND OFFICE STAFF." (42 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 144 ).

12983-67-R: McMASTER GUARDS ASSOCIATION (APPLICANT) V. McMASTER  
UNIVERSITY (RESPONDENT).

UNIT: "ALL SECURITY GUARDS IN THE EMPLOY OF THE RESPONDENT, SAVE AND  
EXCEPT SERGEANTS AND PERSONS ABOVE THE RANK OF SERGEANT." (9 EMPLOYEES  
IN THE UNIT).

12989-67-R: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466  
(APPLICANT) V. ATLANTIC PACKAGING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE  
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES  
STAFF." (107 EMPLOYEES IN THE UNIT).

12997-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA  
(APPLICANT) V. NORTHERN EUREKA REFRIGERATOR COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF  
METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK  
OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

12998-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT)  
V. SEAWAY APPAREL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(32 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 145 ).

12999-67-R: SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C.  
(APPLICANT) V. ALLEWAY AND BEDFORD LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(9 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THAT THE TERM "FOREMEN" INCLUDES DEPARTMENT HEADS.

13002-67-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS' (CANADA) (APPLICANT) V. TRIBAG MINING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BATCHAWANA BAY SAVE AND EXCEPT SHIFT BOSSES AND FOREMEN, PERSONS ABOVE THE RANK OF SHIFT BOSS OR FOREMAN, CHIEF CHEMIST, ASSISTANT CHIEF CHEMISTS, CHIEF SAMPLER, CHIEF ASSAYER, ENGINEERS AND GEOLOGISTS, LABORATORY STAFF, SECURITY GUARDS, COOK HOUSE AND LAUNDRY STAFF AND OFFICE STAFF." (98 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "OFFICE STAFF" INCLUDES CLERICAL STAFF EMPLOYED IN THE WAREHOUSE.

13008-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. UNIFIN DIVISION OF KEEPRITE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, RESEARCH DEVELOPMENT LABORATORY STAFF, METHODS TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (80 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 147 ).



13011-67-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO (APPLICANT) V. NATLIE KNITTING MILLS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (160 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT FIXERS ARE NOT INCLUDED IN THE BARGAINING UNIT.

13012-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. M. SULLIVAN & SON LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13015-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FERRUM METAL MANUFACTURING COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

13016-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. YARWAY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNICAL PERSONNEL ARE NOT INCLUDED IN THE BARGAINING UNIT ABOVE DESCRIBED.

13017-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF TRUSTEES FOR THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WELLAND (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PROFESSIONAL TEACHING STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

13022-67-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WIRE ROPE INDUSTRIES OF CANADA (1966) LTD. (RESPONDENT).

UNIT # 1: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

UNIT # 2: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OUTSIDE SALESMEN, AND PERSONS COVERED BY BARGAINING UNIT # 1." (2 EMPLOYEES IN THE UNIT).

13024-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. W. A. McDUGALL LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13030-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. UNIVERSAL HANDLING EQUIPMENT CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (41 EMPLOYEES IN THE UNIT).

13031-67-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LODGE #128 (APPLICANT) V. COMMERCIAL FILTERS CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

13032-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN WESTINGHOUSE COMPANY LIMITED (RESPONDENT) V. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, A.F.T.E., A.F.L. - C.I.O., C.L.C. (INTERVENER).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT HAMILTON, AT ITS HEAD OFFICE, 286 SANFORD AVENUE NORTH; ITS OFFICE, 70 SANFORD AVENUE NORTH, AND AT PLANT 1, SANFORD AVENUE NORTH; PLANT 2, ABERDEEN AVENUE AND LONGWOOD ROAD; PLANT 3, 1632 BURLINGTON STREET EAST; AND ITS SERVICE SHOP AND OFFICE, 717 WOODWARD AVENUE, ALL BEING IN THE CITY OF HAMILTON, SAVE AND EXCEPT SHIFT-FOREMEN, SUB-FOREMEN AND ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF SHIFT-FOREMAN, SUB-FOREMAN AND

ASSISTANT FOREMAN, SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR, SECTION HEADS AND THOSE ABOVE THE RANK OF SECTION HEAD, ENGINEERS, ENGINEERING ASSISTANTS AND TRAINEES, TECHNOLOGISTS, TECHNICIANS AND TRAINEES, TECHNICAL ASSISTANTS, CHEMISTS, METALLURGISTS, PHYSICISTS, SALESMEN, SALES REPRESENTATIVES, ANALYSTS, ASSOCIATE ANALYSTS AND ANALYST TRAINEES, SPECIALISTS, ADMINISTRATORS, ASSISTANT ADMINISTRATORS, ASSOCIATE ADMINISTRATORS AND ADMINISTRATIVE ASSISTANTS, PERFORMANCE OBSERVERS, DESIGNERS, PURCHASING AGENTS, BUYERS, ACCOUNTANTS, SECRETARIES TO THE GENERAL FOREMEN AND SUPERVISORS, SECRETARIES TO THOSE ABOVE THE RANK OF GENERAL FOREMAN AND SUPERVISOR, PERSONS IN THE ASSISTANT-TO-THE PRESIDENT'S OFFICE, PERSONNEL DEPARTMENT, LAW DEPARTMENT, PATENT DEPARTMENT, TREASURY DEPARTMENT, SYSTEMS DEVELOPMENT AND APPLICATION DEPARTMENT; INSURANCE AND TAXES DEPARTMENT, STATEMENTS AND LEDGER SECTION, APPROPRIATIONS SECTION, BUDGET ADMINISTRATION SECTION, SALARIED PAYROLL SECTION AND PROFIT AND LOSS SECTIONS OF THE COMPTROLLER'S DEPARTMENT; TELETYPE OPERATORS, SECURITY GUARDS, NURSES, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS HIRED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY, TRAINEES ON A GRADUATE TRAINING PROGRAM, AND PERSONS AT PRESENT REPRESENTED FOR COLLECTIVE BARGAINING PURPOSES UNDER THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AND IN ADDITION PERSONS IN THE FOLLOWING CLASSIFICATIONS:

COMPTROLLER'S DEPARTMENT:

RECORDS RETENTION Co-ORDINATOR  
ACCOUNTING SYSTEMS Co-ORDINATOR  
GOVERNMENT ACCOUNTING Co-ORDINATOR  
GENERATOR COST ESTIMATOR  
ASSISTANT TO DIVISIONAL ACCOUNTANT  
ASSISTANT SUPERVISOR ACCOUNTS PAYABLE  
ACCOUNTING CLERK SR.  
ASSISTANT TO ACCOUNTING MANAGER  
ASSISTANT TO MANAGER BUDGET ADMINISTRATION  
TYPIST TO DIVISION ACCOUNTANT  
STENOGRAPHER TO ACCOUNTING MANAGER  
STENOGRAPHER TO DIVISION ACCOUNTANT  
STENOGRAPHER TO MANAGER, PAYROLL ACCOUNTING  
CLERK STENOGRAPHER TO DIVISION ACCOUNTANT

SYSTEMS DIVISION:

CONTRACT REPRESENTATIVE  
SENIOR SALES ASSISTANT  
STENOGRAPHER TO MANAGER, UTILITY SYSTEMS  
STENOGRAPHER TO MANAGER, MINING & PAPER SYSTEMS  
STENOGRAPHER TO MANAGER, MARINE & TRANSPORTATION SYSTEMS  
STENOGRAPHER TO MANAGER, METAL WORKING SYSTEMS  
STENOGRAPHER TO MANAGER, ENGINEERING METAL WORKING SYSTEMS  
STENOGRAPHER TO MANAGER, SYSTEMS CONTROL ENGINEERING  
STENOGRAPHER TO PRODUCT MANAGER, SYSTEMS CONTROLS

POWER TRANSFORMER & CIRCUIT BREAKER DIVISION:

Co-ORDINATOR DIVISION STANDARDS  
SALES ASSISTANT  
SALES ASSISTANT TRAINEE  
CLERK STENOGRAPHER TO GENERAL FOREMAN  
CLERK STENOGRAPHER TO SUPERVISOR INDUSTRIAL ENGINEERING  
CLERK SECRETARY TO MANAGER, ENGINEERING  
CLERK STENOGRAPHER TO SUPERVISOR MANUFACTURING  
ENGINEERING  
CLERK STENOGRAPHER TO GENERAL FOREMAN MAINTENANCE

ELECTRONICS DIVISION:

PURCHASED MATERIAL CONTROLLER  
ESTIMATOR  
SENIOR PRODUCTION PLANNER  
SYSTEMS Co-ORDINATOR  
DRAFTING Co-ORDINATOR  
PROJECT Co-ORDINATOR  
ASSISTANT BUYER  
TECHNICAL AUTHOR  
CHIEF INSPECTOR  
INSPECTION CONTROLLER  
SALES ASSISTANT  
STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING  
STENOGRAPHER TO SUPERINTENDENT, QUALITY CONTROL  
STENOGRAPHER TO SUPERINTENDENT, MATERIAL CONTROL &  
PROCUREMENT  
STENOGRAPHER TO MANAGER, COMMUNICATIONS & CONTROL  
ENGINEERING  
STENOGRAPHER TO SUPERINTENDENT, INDUSTRIAL & MANUFACTURING  
ENGINEERING  
STENOGRAPHER TO MANAGER, RADAR & AIRBORNE ENGINEERING  
STENOGRAPHER TO MANAGER, FIELD ENGINEERING  
STENOGRAPHER TO MANAGER, ANTI-SUBMARINE WEAPONS  
ENGINEERING  
STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING SERVICES  
TYPIST TO SECTION ENGINEER

PURCHASES AND TRAFFIC DEPARTMENT:

STAFF ASSISTANT VALUE ANALYSIS  
CHIEF SWITCHBOARD OPERATOR  
STAFF ASSISTANT PURCHASES  
CONFIDENTIAL MAIL CHAUFFEUR  
CLERK SECRETARY TO MANAGER, COMMUNICATIONS & OFFICE  
SERVICES



SWITCHGEAR AND CONTROL DIVISION:

PRODUCT NEGOTIATOR  
OPERATIONS AND PROCESS PLANNER  
HAGAN CONTROLS SERVICE REPRESENTATIVE  
ASSISTANT BUYER  
PURCHASING SERVICES Co-ORDINATOR  
BUDGET Co-ORDINATOR  
PRODUCTION PLANNER  
SALES ASSISTANT  
WRITER ORDER INTERPRETATION  
STENOGRAPHER TO MANAGER, MARKETING STANDARD CONTROL  
AND SWITCHGEAR DEVICES  
CLERK STENOGRAPHER TO MANAGER HAGAN CONTROLS  
STENOGRAPHER TO MANAGER, QUALITY ASSURANCE  
CLERK TYPIST CONFIDENTIAL TO MANAGER, DESIGN &  
DEVELOPMENT ENGINEERING  
STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING SERVICES  
STENOGRAPHER TO MANAGER, COST IMPROVEMENT  
STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING  
ENGINEERING  
STENOGRAPHER CONFIDENTIAL TO MANAGER, ENGINEERING  
SERVICES  
STENOGRAPHER CONFIDENTIAL TO SECTION MANAGER,  
ENGINEERING  
CLERK STENOGRAPHER TO SUPERINTENDENT PRODUCTION AND  
INSPECTION  
STENOGRAPHER CONFIDENTIAL TO SECTION MANAGER POWER  
CONVERSION ENGINEERING

TURBINE AND GENERATOR DIVISION:

PROGRAMMER NUMERICAL CONTROL  
STAFF ASSISTANT  
SALES ASSISTANT  
ORDER SERVICE ASSISTANT  
PRODUCTION CONTROL Co-ORDINATOR  
MATERIAL CONTROL Co-ORDINATOR  
PLANNING AND SCHEDULING Co-ORDINATOR  
M. I. Co-ORDINATOR  
PROCESS PLANNER  
MATERIAL HANDLING Co-ORDINATOR  
SHOP TOOLING Co-ORDINATOR  
ROUTER ESTIMATOR M.P.A.  
STENOGRAPHER TO MANAGER, SALES DEPARTMENT  
CLERK STENOGRAPHER TO SUPERVISOR TOOL ENGINEERING  
STENOGRAPHER TO MANAGER, ENGINEERING  
CLERK STENOGRAPHER TO PURCHASING AGENT  
CLERK STENOGRAPHER TO SUPERINTENDENT, QUALITY CONTROL  
CLERK STENOGRAPHER TO SUPERINTENDENT, MANUFACTURING  
SERVICES

TURBINE AND GENERATOR DIVISION: (CONT'D)

CLERK STENOGRAPHER TO GENERAL FOREMAN, FABRICATION  
AND PUNCH SHOP AND

- GENERAL FOREMAN, ASSEMBLY AND  
COIL WINDING AND
- GENERAL FOREMAN, MACHINING  
DEPARTMENTS

CLERK STENOGRAPHER TO SUPERINTENDENT, PLANT MAINTENANCE

CLERK STENOGRAPHER TO SUPERINTENDENT, PRODUCTION

CLERK STENOGRAPHER TO SUPERVISOR, FACTORY ENGINEERING

CLERK SECRETARY TO MANAGER, MANUFACTURING

CLERK TYPIST DEPARTMENT PERFORMANCE

ELECTRONIC TUBE DIVISION:

STENOGRAPHER TO MANAGER, MANUFACTURING

AIR BRAKE DIVISION:

MACHINE TOOLS Co-ORDINATOR

TECHNICAL SALES ASSISTANT

CLERK SECRETARY TO MANAGER, MARKETING, PNEUMATIC  
HYDRAULIC & WESTOFLEX PRODUCTS

STENOGRAPHER TO MANAGER ENGINEERING

CLERK STENOGRAPHER TO SUPERINTENDENT MANUFACTURING &  
INDUSTRIAL ENGINEERING

APPLIANCE DIVISION:

QUALITY CONTROL REPRESENTATIVE

PRODUCTION CONTROL Co-ORDINATOR

SENIOR PRODUCTION PLANNER

PRODUCT STYLIST

DISPATCHER SERVICE CENTRE

STENOGRAPHER TO MANAGER, MERCHANDISING SERVICES  
DEPARTMENT

STENOGRAPHER TO MANAGER, PRODUCT

STENOGRAPHER TO MANAGER, ENGINEERING

STENOGRAPHER TO PURCHASING AGENT

STENOGRAPHER TO SUPERINTENDENT, QUALITY CONTROL

STENOGRAPHER TO MANAGER, ADVERTISING & PROMOTION

OPERATIONS DEPARTMENT:

ASSISTANT ACCOUNTANT

APPARATUS DISTRICT STOCK Co-ORDINATOR

STENOGRAPHER TO ACCOUNTANT

MOTOR DIVISION:

TECHNICAL SALES ASSISTANT  
PRODUCTION CONTROL CO-ORDINATOR  
OPERATION AND PROCESS PLANNER  
STENOGRAPHER TO SUPERVISOR, MANUFACTURING ENGINEERING  
CLERK STENOGRAPHER TO GENERAL SUPERINTENDENT,  
MANUFACTURING

SERVICE SHOP & OFFICE, WOODWARD AVENUE:

SENIOR PRODUCTION PLANNER  
ADMINISTRATIVE CLERK  
CO-ORDINATOR COST IMPROVEMENT  
STENOGRAPHER RENEWAL PARTS TO MANAGER, RENEWAL PARTS  
TECHNICAL SERVICES  
STENOGRAPHER RECEPTIONIST TO MANAGER, APPARATUS  
SERVICE, HAMILTON DISTRICT

APPARATUS GROUP STAFF:

NEGOTIATOR U. S. ORDERS  
HEADQUARTERS SPECIFICATIONS CO-ORDINATOR  
REPRODUCTION PHOTOGRAPHER  
STENOGRAPHER TO MANAGER, HEADQUARTERS ENGINEERING  
SERVICES  
CLERK ENGINEERING TO MANAGER, REPRODUCTION & TECHNICAL  
MANUALS DEPARTMENT  
STENOGRAPHER TO MANAGER, APPARATUS MARKETING SERVICES  
CLERK-STENOGRAPHER TO DIRECTOR, APPARATUS ADVERTISING  
APPARATUS SALES  
SECRETARY LIBRARIAN TO DIRECTOR, COST REDUCTION  
SECRETARY & STATISTICAL CLERK TO DIRECTOR OF MANUFACTURING  
APPARATUS PRODUCTS

FIELD INSTALLATION DEPARTMENT:

PRODUCTION CONTROL CO-ORDINATOR

APPARATUS GROUP STAFF:

HEADQUARTERS SPECIFICATIONS CO-ORDINATOR  
REPRODUCTION PHOTOGRAPHER  
STENOGRAPHER TO MANAGER, HEADQUARTERS ENGINEERING  
SERVICES  
CLERK ENGINEERING TO MANAGER, REPRODUCTION & TECHNICAL  
MANUALS DEPARTMENT  
STENOGRAPHER TO MANAGER, APPARATUS MARKETING SERVICES  
STENOGRAPHER TO DIRECTOR, APPARATUS ADVERTISING,  
APPARATUS SALES

APPARATUS GROUP STAFF: (CONT'D)

STENOGRAPHER TO DIRECTOR, COST REDUCTION  
SECRETARY & STATISTICAL CLERK TO DIRECTOR OF  
MANUFACTURING, APPARATUS PRODUCTS

(820 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13037-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) V. FOSTER WHEELER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS THAT NORMALLY GRANTED BY THE BOARD IN CASES OF THIS KIND AND WITH ONE EXCEPTION WE SEE NO REASON FOR DEPARTING FROM THAT UNIT. THE BOARD, THEREFORE, FOUND THE UNIT DESCRIBED ABOVE TO BE APPROPRIATE.

FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT TUGGER OPERATORS AND SINGLE DRUM HOIST OPERATORS ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

13038-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) V. CUMBUSTION ENGINEERING SUPERHEATER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13041-67-R: LOCAL UNION NO. 500 CANADIAN UNION OF GENERAL EMPLOYEES OF THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS DINING AND CAFETERIA DIVISION AT TORONTO YOUNG MEN'S CHRISTIAN ASSOCIATION, CENTRAL BRANCH IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).



13044-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) V. COPE & GURR MACHINERY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

13045-67-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL #28 (APPLICANT) V. MCCORQUODALE & BLADES PRINTERS LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN AND JOURNEYWOMEN BOOKBINDERS AND THEIR HELPERS EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (30 EMPLOYEES IN THE UNIT).

13051-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. THE BORDEN CHEMICAL COMPANY (CANADA 1962) LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT AT 595 CORONATION DRIVE IN METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

13060-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. ROELOFSON ELEVATOR COMPANY, DIVISION OF MONTGOMERY ELEVATOR COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND ENGINEERING STAFF, DRAFTSMEN, SERVICE DEPARTMENT EMPLOYEES AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS." (47 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13069-67-R: INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. THE DAILY TIMES AND CONSERVATOR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON ENGAGED IN PRESSROOM WORK, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (4 EMPLOYEES IN THE UNIT).

13082-67-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CHARLES ALBERT SMITH LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR, AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

13085-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. P. N. I. CORPORATION (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(3 EMPLOYEES IN THE UNIT).

13086-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 141 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPER OF AMERICA (APPLICANT) V. LONDON DISPOSAL SERVICES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF."  
(3 EMPLOYEES IN THE UNIT).

13091-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ELLIS-DON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WATERLOO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13093-67-R: LOCAL UNION 1824, OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (APPLICANT) V. PARAMOUNT PAINTING & DECORATING (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

13094-67-R: THE NIAGARA PENINSULA PRINTING PRESSMEN AND ASSISTANTS' UNION LOCAL 425 (APPLICANT) V. JOHNSON PRESS (RESPONDENT).

UNIT: "ALL LETTERPRESS AND OFFSET PRESSMEN, THEIR ASSISTANTS AND APPRENTICES, EMPLOYED BY THE RESPONDENT IN THE PRESSROOM OF ITS PLANT IN NIAGARA FALLS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13095-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) V. CARIBOU CONSTRUCTION INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(11 EMPLOYEES IN THE UNIT).

13098-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.  
LADY MINTO HOSPITAL (CHAPLEAU) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT CHAPLEAU, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, AND OFFICE STAFF." (42 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, WE DECLARE THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

13103-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
LOCAL 498 BRANTFORD (APPLICANT) V. DUFFERIN MATERIALS & CONSTRUCTION  
LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(6 EMPLOYEES IN THE UNIT).

13105-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 141  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. KEYSTONE CONTRACTORS  
LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."  
(7 EMPLOYEES IN THE UNIT).

13109-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA  
(APPLICANT) V. A. P. WOODWORKING SHOP (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(3 EMPLOYEES IN THE UNIT).

13110-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)  
V. THE BORDEN CHEMICAL COMPANY (CANADA) 1962 LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CHEMISTS, ENGINEERS, LABORATORY TECHNICIANS, NURSES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS EMPLOYED UNDER THE WATERLOO UNIVERSITY TRAINING PROGRAM AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MAY 19, 1967 ISSUED TO THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101." (52 EMPLOYEES IN THE UNIT).

13113-67-R: LOCAL UNION 1824, OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (APPLICANT) V. STANDARD PAINTING & DECORATING LIMITED (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN THE COUNTY OF WELLINGTON (EXCEPTING THEREFROM THE TOWNSHIP OF GUELPH), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

IT HAS BEEN THE RECENT PRACTICE OF THE BOARD TO CONSIDER THE COUNTY OF WELLINGTON AS AN APPROPRIATE GEOGRAPHIC AREA. THE APPLICANT HAS BARGAINING RIGHTS FOR THE PAINTERS AND PAINTERS' APPRENTICES OF THE RESPONDENT IN THE TOWNSHIP OF GUELPH IN THE COUNTY OF WELLINGTON. IT NOW SEEKS BARGAINING RIGHTS FOR THE WHOLE OF THE COUNTY OF WELLINGTON. IN THESE CIRCUMSTANCES, THE BOARD FOUND THE ABOVE UNIT TO BE APPROPRIATE.

13115-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. (APPLICANT) V. D'ANGELO PLASTERING CO. LTD., (DOMENICO D'ANGELO) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS PLASTERING OPERATIONS IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

13116-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. (APPLICANT) V. YGL CONSTRUCTION LTD. (YVAN ST. GELAIS) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS LATHING OPERATIONS IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).



13124-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA  
(APPLICANT) v. BALL BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HERSCHEL, MONTEAGLE, FARADAY, DUNGANNON, WOLLASTON AND LIMERICK, ALL IN THE COUNTY OF HASTINGS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

THE APPLICANT IS PROPOSING AN AREA CONSISTING OF THAT PORTION OF THE COUNTY OF HASTINGS, NORTH OF BOARD AREA #12, WITH THE EXCEPTION OF THE TOWNSHIP OF WICKLOW. THE RESPONDENT PROPOSES THE TOWN OF BANCROFT. WE DO NOT PROPOSE TO ESTABLISH A NEW AREA AT THIS TIME AND AS A PURELY INTERIM MEASURE, THEREFORE, THE BOARD FOUND THE UNIT DESCRIBED ABOVE TO BE APPROPRIATE.

13152-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA  
(APPLICANT) v. DINSMORE CONSTRUCTION LIMITED (RESPONDENT) v.  
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF EXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12883-66-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v.  
THE GOODYEAR TIRE AND RUBBER COMPANY OF CANADA, LIMITED (RESPONDENT)  
v. UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA,  
AFL-CIO-CLC (INTERVENER).

- AND -

12899-66-R: UNITED, RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF  
AMERICA, AFL - CIO - CLC (APPLICANT) v. THE GOODYEAR TIRE AND RUBBER  
COMPANY OF CANADA, LIMITED (RESPONDENT) v. CANADIAN UNION OF  
OPERATING ENGINEERS (INTERVENER).

UNIT: 12883-66-R. "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY  
ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER  
ROOMS AT ITS PLANT IN COLLINGWOOD, SAVE AND EXCEPT CHIEF ENGINEER AND  
PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

UNIT: 12899-66-R. "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD,  
SAVE AND EXCEPT QUALITY CONTROL INSPECTORS, SUPERVISORS, PERSONS ABOVE  
THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, PERSONS REGULARLY  
EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING  
THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY THE BOARD'S  
CERTIFICATE ISSUED THIS DAY TO THE CANADIAN UNION OF OPERATING  
ENGINEERS." (35 EMPLOYEES IN THE UNIT).

VOTE: 12883-66-R.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF CANADIAN UNION OF OPERATING	
ENGINEERS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF UNITED RUBBER, CORK, LINOLEUM &	
PLASTIC WORKERS OF AMERICA,	
AFL-CIO-CLC	0

12887-66-R: SPECIALIZED PARCEL DELIVERY AND HANDLERS' UNION  
(APPLICANT) V. W. J. MOWAT LIMITED (RESPONDENT).

UNIT # 1: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

UNIT # 2: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF FLAMBORO EAST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

UNIT # 3: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

VOTE: UNIT #3.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

12910-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC  
(APPLICANT) V. OVERLAND HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES  
(OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT MANAGERS AND PERSONS ABOVE THE RANK OF MANAGER." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

12937-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. THOMPSON-HEYLAND LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURKS FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (67 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	54
NUMBER OF PERSONS WHO CAST BALLOTS	54
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	28
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	26

(SEE INDEXED ENDORSEMENT PAGE 143 ).

12939-67-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C., LOCAL 204 (APPLICANT) V. CLARKE INSTITUTE OF PSYCHIATRY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDER-GRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, OTHER GRADUATE OR UNDER-GRADUATE PROFESSIONAL PERSONNEL, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	52
NUMBER OF PERSONS WHO CAST BALLOTS	47
NUMBER OF SPOILED BALLOTS	1
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	28
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	16

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

12663-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WINDSOR RACEWAY HOLDINGS LIMITED. (48 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 134 ).

12861-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION #91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BERTRAND FRERE CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (11 EMPLOYEES).

12888-66-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS WAREHOUSEMEN AND HELPERS GENERAL TRUCK DRIVERS UNION No. 938 (APPLICANT) V. C. F. AITCHISON TRANSPORT LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (8 EMPLOYEES).

12909-66-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. FERSU HOTEL LIMITED, TRADING AS ROYAL HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).

12961-67-R: LOCAL 264, BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA (APPLICANT) V. LAURA SECORD CANDY SHOPS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (192 EMPLOYEES).

12990-67-R: RETAIL STORE EMPLOYEES UNION LOCAL No. 832 (APPLICANT) V. DRYDEN DISTRICT GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 865 (INTERVENER). (51 EMPLOYEES).

12996-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. MASTERCRAFT CONSTRUCTION (OTTAWA) LIMITED (RESPONDENT). (3 EMPLOYEES).

13007-67-R: RETAIL STORE EMPLOYEES UNION LOCAL No. 832 (APPLICANT) V. DRYDEN DISTRICT GENERAL HOSPITAL (RESPONDENT). (1 EMPLOYEE).

13023-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. W. A. McDougall CONSTRUCTION (RESPONDENT). (NO EMPLOYEES).

13027-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL No. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. HURLEY TRANSPORT COMPANY LIMITED (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 150 ).



13028-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL No. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. McNEIL TRANSPORT LIMITED (RESPONDENT). (6 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 150).

13040-67-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (APPLICANT) V. DOMTAR PULP & PAPER LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD PULP, SULPHITE & PAPER MILL WORKERS & IT'S LOCAL #77 (INTERVENER). (17 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 152).

13047-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. A. P. WOODWORKING SHOP (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 153).

13080-67-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 322 (APPLICANT) V. MORRISON-LAMOTHE BAKERY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (189 EMPLOYEES).

13111-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 268 AFL-CIO, CLC (APPLICANT) V. PORT ARTHUR LABOUR ASSOCIATION (RESPONDENT) V. HOTEL, MOTEL AND RESTAURANT EMPLOYEES AND BEVERAGE DISPENSERS UNION, LOCAL #757 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE LAKEHEAD LABOUR CENTRE AT PORT ARTHUR SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

13050-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PERINI LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOP ON MIDLAND AVENUE, SCARBOROUGH, SAVE AND EXCEPT FOREMEN AND THOSE ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (19 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS  
NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

13

13

1

12

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12242-66-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
LOCAL 18 (APPLICANT) V. SOVEREIGN CONSTRUCTION COMPANY LIMITED  
(RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF  
THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF  
NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE  
AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-  
WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

12981-67-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA,  
AFL-CIO, CLC (APPLICANT) V. NATIONAL PRESSED GLASS LIMITED (RESPONDENT)  
V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT  
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

11853-66-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND  
ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTER-  
NATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA (APPLICANT) V. SILVERWOOD DAIRIES LIMITED,  
BRANTFORD, ONTARIO (RESPONDENT). (37 EMPLOYEES).

13013-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA  
(APPLICANT) V. TAMBLYN-PRITCHARD CONSTRUCTION LTD. (RESPONDENT).  
(16 EMPLOYEES).

13067-67-R: EMPLOYEES' COMMITTEE UNITED CO-OPERATIVES OF ONTARIO,  
GUELPH BRANCH (APPLICANT) V. UNITED CO-OPERATIVES OF ONTARIO,  
GUELPH BRANCH (RESPONDENT). (52 EMPLOYEES).

13079-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INDALOX  
LIMITED (RESPONDENT). (82 EMPLOYEES).

13128-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA  
(APPLICANT) V. W. S. FULLERTON CONSTRUCTION CO., LTD. (RESPONDENT).  
(8 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED  
OF DURING MAY

12680-66-R: CAMILLE VIGNEAULT (APPLICANT) V. THE INTERNATIONAL  
BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS-LOCAL 89  
(RESPONDENT). (16 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 153).

12987-67-R: HOWARD SAUNDERS, JOHN BOYD & STUART STEPHENSON  
(APPLICANTS) V. CANADIAN TRANSPORTATION WORKERS UNION, NO. 197 NATIONAL  
COUNCIL OF CANADIAN LABOUR (RESPONDENT). (4 EMPLOYEES). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 154).

13033-67-R: KENNETH LAWRENCE WALTERS (APPLICANT) V. THE RETAIL,  
WHOLESALE AND DEPARTMENT STORE UNION, A.F.L.-C.I.O.-C.L.C. (RESPONDENT).  
(8 EMPLOYEES). (GRANTED).

13088-67-R: MAGNETIC COIL LIMITED (APPLICANT) V. INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 804 (WATERLOO)  
(RESPONDENT). (30 EMPLOYEES). (GRANTED).

13150-67-R: GERALD CYR (APPLICANT) V. INTERNATIONAL HOD CARRIERS  
BUILDING AND COMMON LABOURERS OF AMERICA LOCAL UNION 527 FOR  
LABOURERS (RESPONDENT). (10 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 158).

13151-67-R: VERNER PEDERSEN (APPLICANT) V. UNITED BROTHERHOOD OF  
CARPENTERS & JOINERS OF AMERICA - LOCAL UNION 93 (RESPONDENT).  
(6 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 158).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED

OF DURING MAY

12977-67-U: DONEGAL CONSTRUCTION COMPANY (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (RESPONDENT). (WITHDRAWN).

13099-67-U: ABITIBI PAPER COMPANY LTD., STURGEON FALLS DIVISION (APPLICANT) V. R. LORTIE, ET AL (RESPONDENTS). (WITHDRAWN).

13108-67-U: STEEN MECHANICAL CONTRACTORS LTD. (APPLICANT) V. H. BARBER ET AL (RESPONDENTS). (WITHDRAWN).

13121-67-U: CANADIAN BECHTEL LIMITED (APPLICANT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 162 AND A. D. MARIANO (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 159).

13122-67-U: CANADIAN BECHTEL LIMITED (APPLICANT) V. RENE A. PILON (RESPONDENT). (DISMISSED).

APPLICATION FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED

OF DURING MAY

13059-67-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. CLEMENT & BELLMORE CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO INSTITUTE PROSECUTION DISPOSED OF DURING

MAY

12811-66-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. COOPER-WEEKS LIMITED AND JACK COOPER (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 162).

13054-67-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (APPLICANT) V. KRANTEX COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

13056-67-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. CLEMENT & BELLMORE CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).



13107-67-U: STEEN MECHANICAL CONTRACTORS LIMITED (APPLICANT) V. H. BARBER ET AL (RESPONDENTS). (WITHDRAWN).

13131-67-U: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA V. SHOPSY'S FOODS LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

MAY

12643-66-U: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (COMPLAINANT) V. W. T. HAWKINS LTD. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 164).

12862-66-U: MR. IAN HOOD (COMPLAINANT) V. GENERAL BAKERIES LIMITED (RESPONDENT). (DISMISSED).

12868-66-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT) V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT). (WITHDRAWN).

12895-66-U: FRANK GREENE (COMPLAINANT) V. CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 180).

12915-66-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) V. MODERN FOOTWEAR COMPANY, DIVISION OF JACK SCHWEBEL LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 184).

12931-67-U: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28 (COMPLAINANT) V. REGAL STATIONERY COMPANY LIMITED (RESPONDENT).

- AND -

12949-67-U: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28 (COMPLAINANT) V. REGAL STATIONERY COMPANY LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 187).

12947-67-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO; CLC (COMPLAINANT) V. IROQUOIS HOTEL GALT (1964) LIMITED (RESPONDENT). (DISMISSED).

12962-67-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. BOYLE MIDWAY (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

12985-67-U: CANADIAN TEXTILE COUNCIL (COMPLAINANT) V. HARDING BRANTFORD LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 192).

13000-67-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (COMPLAINANT) V. KRANTEX COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

13001-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GLOBE SPRING AND CUSHION COMPANY LTD. (RESPONDENT). (WITHDRAWN).

13004-67-U: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SEVEN UP ONTARIO LIMITED (RESPONDENT). (WITHDRAWN).

13025-67-U: LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. MUIRHEAD INSTRUMENTS LIMITED (RESPONDENT). (WITHDRAWN).

13046-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. FERRUM METAL MFG. COMPANY (RESPONDENT). (WITHDRAWN).

13061-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ECSTALL MINING LIMITED (RESPONDENT). (WITHDRAWN).

13062-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ECSTALL MINING LIMITED (RESPONDENT). (WITHDRAWN).

13124-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. JET METAL PRODUCTS AND JETCO MANUFACTURING LTD. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

12978-67-M: GRANDVIEW LODGE, AND BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (APPLICANTS). (GRANTED).

12994-67-M: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28, AND W. J. CAGE LIMITED (APPLICANTS). (GRANTED).

13026-67-M: McCORD CORPORATION, AND LOCAL NO. 776, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANTS). (GRANTED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF

DURING MAY

13083-67-M: CANADIAN UNION OF PUBLIC EMPLOYEES-C.L.C. ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (APPLICANT) V. ONTARIO HYDRO (RESPONDENT). (WITHDRAWN).

12688-66-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. LIBBY, McNEILL & LIBBY OF CANADA LTD. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 193).

JURISDICTIONAL DISPUTES SECTION 66(6)

13034-67-JD: CANADA MILLWRIGHTS LIMITED (COMPLAINANT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO; LOCAL 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA; AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NO. 721, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOUR (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 195).

13057-67-JD: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL # 46 (COMPLAINANT) V. CLEMENT & BELLMORE CONSTRUCTION LIMITED AND INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL # 183, AND LOCAL # 506 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 199).

13058-67-JD: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL #46 (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL # 183 (RESPONDENT). (DISMISSED).

13140-67-JD: FRANKI CANADA LIMITED (COMPLAINANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 183, TORONTO AND THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506, MICHAEL J. REILLY AND ED. LINESS (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 200).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12319-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA (APPLICANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 200).

12923-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JONES & LAUGHLIN MINING COMPANY, LTD. (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 202).

12941-67-R: LOCAL UNION 326, METRO, TORONTO, ONTARIO, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. BREWERS' WAREHOUSING COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 203).

INDEXED ENDORSEMENTS - CERTIFICATION

11476-65-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE UNIVERSITY OF GUELPH (RESPONDENT) V. CANADIAN GUARDS ASSOCIATION (INTERVENER) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF THE BOARD: (MAY 15TH, 1967).

1. THE BOARD HAS CONSIDERED THE INTERIM REPORT OF THE EXAMINER DATED JANUARY 3RD, 1967.

2. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, AND THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS THAT ALL TRADES, SERVICES AND MAINTENANCE EMPLOYEES OF THE RESPONDENT EMPLOYED OR NORMALLY PERFORMING A MAJOR PART OF THEIR WORK AT ITS CAMPUS AT GUELPH, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF FIRE PREVENTION OFFICER, DEPUTY CHIEF FIRE PREVENTION OFFICER, PERSONS ENGAGED IN FOOD SERVICES, PERSONS ENGAGED IN AGRICULTURAL WORK, PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED DECEMBER 15TH, 1965, ISSUED TO THE CANADIAN GUARDS ASSOCIATION, PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED DECEMBER 15TH, 1965, ISSUED TO THE CANADIAN UNION OF OPERATING ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS ENROLLED IN THE UNIVERSITY, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT PERSONS DESCRIBED AS WATCHMEN AND NOT PRESENTLY REPRESENTED BY THE CANADIAN GUARDS ASSOCIATION ARE INCLUDED IN THE BARGAINING UNIT.

4. AN ISSUE HAS ARISEN WITH RESPECT TO CERTAIN PERSONS ENGAGED IN FOOD SERVICES OPERATIONS. THE FACTS SET OUT IN THE EXAMINER'S REPORT RAISED SUBSTANTIAL DOUBT WHETHER SUCH PERSONS ARE IN FACT EMPLOYEES OF THE RESPONDENT. IT IS NOT NECESSARY FOR US TO MAKE ANY DETERMINATION OF THIS QUESTION AT THIS STAGE OF THE PROCEEDINGS HOWEVER, SINCE WE DO NOT FIND SUCH PERSONS TO BE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 2 ABOVE. IT WOULD APPEAR THAT CERTAIN



PERSONS NOW UNDER THE DIRECTION AND CONTROL OF VERSAFOOD SERVICES LIMITED, WHO HAD BEEN EMPLOYEES OF THE RESPONDENT, HAVE BEEN RETAINED ON THE PAYROLL OF THE RESPONDENT IN ORDER TO PRESERVE FOR THEM CERTAIN BENEFITS. THE BOARD'S RULING, OF COURSE, HAS NO EFFECT WITH RESPECT TO ANY SUCH ARRANGEMENTS. IF SUCH PERSONS ARE IN FACT EMPLOYEES OF THE RESPONDENT, THEN IT WOULD BE OPEN TO THE APPLICANT TO REQUEST THE BOARD TO DEFINE A BARGAINING UNIT IN WHICH THEY WOULD APPROPRIATELY BE INCLUDED. IF SUCH A REQUEST IS MADE PRIOR TO THE FINAL DISPOSITION OF THIS APPLICATION, THE BOARD WOULD, OF COURSE, DEAL WITH IT, MAKING SUCH DETERMINATIONS AS MIGHT BE NECESSARY FOR ITS DISPOSITION.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 2.

7. THE EXAMINER IS DIRECTED TO CONTINUE WITH THE INQUIRIES SET OUT IN THE BOARD'S ENDORSEMENT DATED SEPTEMBER 20TH, 1966.

12663-66-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WINDSOR RACEWAY HOLDINGS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: W. W. TILLER FOR THE APPLICANT, M. YUFFY, Q.C., B. M. W. PAULIN AND L. PARKER FOR THE RESPONDENT.

DECISION OF THE BOARD: (MAY 10TH, 1967).

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPOSED OF EMPLOYEES IN THE JOB CLASSIFICATION OF TICKET SELLER, PROGRAM SELLER, USHER, PATRON DIRECTOR AND ADMISSION, SAVE AND EXCEPT PERSONS COVERED BY EXISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 AND THE MUTUEL EMPLOYEES' ASSOCIATION, LOCAL 528, BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION. THE RESPONDENT ALLEGES THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE ALREADY COVERED BY THE COLLECTIVE AGREEMENT CURRENTLY IN EFFECT BETWEEN THE RESPONDENT AND THE HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743.

4. ON THE EVIDENCE BEFORE US, THE BOARD FINDS THAT THE HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 IS THE BARGAINING AGENT FOR THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION WITH THE POSSIBLE EXCEPTION OF CASHIERS, ADMITTANCE, AND SOME CATEGORIES OF TICKET COLLECTORS. THE POSITION OF THE RESPONDENT IS THAT THE RECOGNITION CLAUSE OF THE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 743 SHOULD BE INTERPRETED TO INCLUDE THE ABOVE MENTIONED CATEGORIES OF EMPLOYEES WITHIN THE BARGAINING UNIT AND THAT IT WAS ONLY THE INTENTION OF THE PARTIES TO EXCLUDE THOSE PERSONS EMPLOYED IN A MANAGERIAL CAPACITY ABOVE CASHIERS, ADMITTANCE AND TICKET COLLECTORS.

5. IN THE OPINION OF THE BOARD THE ONLY APPROPRIATE BARGAINING UNIT IN THE INSTANT CASE WOULD BE A TAG END UNIT, THAT IS, A UNIT COMPOSED OF ALL THOSE EMPLOYEES OF THE RESPONDENT FOR WHOM NO TRADE UNION ALREADY HOLDS THE BARGAINING RIGHTS. IN SUCH A BARGAINING UNIT, WHETHER THE ABOVE MENTIONED CATEGORIES OF EMPLOYEES, WITH RESPECT TO WHOM THERE MAY BE SOME DOUBT, ARE INCLUDED OR EXCLUDED FROM THE UNIT, THE APPLICANT HAS EVIDENCE OF MEMBERSHIP FOR LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN THE UNIT. ACCORDINGLY, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION AS TO THE SCOPE OF THE BARGAINING UNIT CONTAINED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743.

6. SINCE THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT THE APPLICANT HAS EVIDENCE OF MEMBERSHIP FOR LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT, IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, THE APPLICATION IS DISMISSED.

12795-66-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 210, WINDSOR, ONTARIO (AFFILIATED WITH BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL-CIO-CLC) (APPLICANT) v. SYDENHAM DISTRICT HOSPITAL (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF THE BOARD: (MAY 24TH, 1967).

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1)(J) OF THE LABOUR RELATIONS ACT.

2. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER, DATED APRIL 11TH, 1967, IN THIS MATTER.

3. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. AS IS USUALLY THE CASE, WHERE A UNIT OF PART-TIME EMPLOYEES IS INVOLVED, BECAUSE OF THE IRREGULARITY OF EMPLOYMENT OF THE EMPLOYEES CONCERNED, A QUESTION AROSE IN THIS MATTER AS TO WHAT NAMES SHOULD BE INCLUDED ON THE LIST OF EMPLOYEES. IN ORDER TO DETERMINE WHAT NAMES ARE APPROPRIATE FOR INCLUSION ON THE RESPONDENT'S LIST OF EMPLOYEES FOR THE PURPOSE OF ASCERTAINING THE APPLICANT'S MEMBERSHIP POSITION, IT IS THE BOARD'S USUAL PRACTICE (EXCEPT IN APPLICATIONS IN THE CONSTRUCTION INDUSTRY) TO INQUIRE WHICH EMPLOYEES WERE EMPLOYED BY THE RESPONDENT WITHIN THE PERIOD OF A MONTH PRIOR TO THE MAKING OF THE APPLICATION. THIS PRACTICE WHICH IS FOLLOWED WITH RESPECT TO "FULL TIME" BARGAINING UNITS IS EQUALLY APPLICABLE TO "PART TIME" BARGAINING UNITS. IF A PERSON WAS NOT EMPLOYED DURING THE MONTH IMMEDIATELY PRECEDING THE MAKING OF THE APPLICATION, THE PERSON IS NOT DEEMED TO BE AN EMPLOYEE FOR THE PURPOSE OF THE COUNT, ALTHOUGH HE MAY BE CONSIDERED TO BE AN EMPLOYEE FOR OTHER PURPOSES (E.G., HE MAY HAVE SENIORITY RIGHTS AND RECALL PRIVILEGES WHILE ON LAY-OFF). THIS PRACTICE HAS BEEN ONE OF LONG STANDING WITH THE BOARD AND WAS DETERMINED IN ORDER THAT THE PARTIES WOULD BE ABLE TO ASCERTAIN, IN ADVANCE OF A HEARING, WHICH PERSONS WERE DEALT WITH BY THE BOARD IN THE APPLICATION. ACCORDINGLY, IN THIS CASE ONLY THOSE PERSONS WHO ARE EMPLOYED DURING THE MONTH IMMEDIATELY PRECEDING THE MAKING OF THIS APPLICATION WILL BE CONSIDERED BY THE BOARD TO DETERMINE WHO ARE TO BE INCLUDED ON THE RESPONDENT'S LIST FOR THE PURPOSE OF ASCERTAINING THE APPLICANT'S MEMBERSHIP POSITION AT THE TIME THE APPLICATION WAS MADE. THE ONE MONTH PERIOD UNDER CONSIDERATION IS ONE CLEAR MONTH, THAT IS TO SAY, IF AN APPLICATION IS MADE ON THE SECOND DAY OF MARCH, ONLY THOSE EMPLOYEES WHO WERE AT WORK ON AND AFTER THE FIRST DAY OF FEBRUARY WILL BE CONSIDERED TO HAVE BEEN EMPLOYED WITHIN A MONTH OF THE DATE OF THE MAKING OF THE APPLICATION. SIMILARLY, IF A PERSON IS NOT AT WORK ON THE DATE OF MAKING OF THE APPLICATION, BUT HAS BEEN AT WORK WITHIN THE MONTH BEFORE, AND A QUESTION ARISES AS TO HIS INCLUSION ON THE LIST FOR THE PURPOSE OF THE COUNT, THE BOARD WILL ASCERTAIN WHETHER OR NOT THE PERSON WILL BE AT WORK WITHIN ONE CLEAR MONTH FOLLOWING THE DATE OF THE MAKING OF THE APPLICATION, THAT IS TO SAY, IF THE APPLICATION IS MADE ON THE SECOND DAY OF MARCH, ONLY THOSE EMPLOYEES WHO WILL RETURN TO WORK ON OR BEFORE THE THIRD DAY OF APRIL WILL BE CONSIDERED TO HAVE BEEN AT WORK WITHIN A MONTH FOLLOWING THE DATE OF THE MAKING OF THE APPLICATION. OF COURSE, IF A PERSON WAS ACTUALLY AT WORK ON THE DATE THE APPLICATION WAS MADE, HE WILL BE INCLUDED ON THE LIST OF EMPLOYEES FOR THE PURPOSE OF THE COUNT WITHOUT FURTHER INQUIRY AS TO WHETHER OR NOT HE WAS AT WORK WITHIN A MONTH PRIOR TO AND THE MONTH SUBSEQUENT TO THE DATE OF THE MAKING OF THE APPLICATION. IF, HOWEVER, AN EMPLOYEE IS NOT AT WORK ON THE DATE THE APPLICATION IS MADE, BOTH CONDITIONS MUST BE FULFILLED IN ORDER THAT HE MAY BE INCLUDED ON THE LIST OF EMPLOYEES FOR THE PURPOSE OF THE COUNT, THAT IS, HE MUST BE EMPLOYED WITHIN A MONTH PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION AND WITHIN THE MONTH SUBSEQUENT TO THE MAKING OF THE APPLICATION AS DETERMINED ABOVE. HOWEVER, IT IS ONLY WHERE THERE IS A CHALLENGE TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, THAT AN ISSUE ARISES AS TO WHAT PERSONS ARE ELIGIBLE FOR INCLUSION ON THE LIST FOR THE PURPOSE OF THE COUNT.

4. AFTER THE PRELIMINARY ISSUE HAS BEEN DEALT WITH, A SECONDARY QUESTION WHICH MUST ALSO BE CONSIDERED IS WHICH PERSONS ARE "REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK". THE QUESTION UNDER CONSIDERATION IS NOT INTENDED TO DISTINGUISH SUCH PERSONS FROM PERSONS WHO ARE "IRREGULARLY" EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. EITHER THE PERSONS WITH WHOM WE ARE CONCERNED ARE EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK OR THEY ARE EMPLOYED FOR MORE THAN 24 HOURS PER WEEK. THE EMPLOYEES MUST FALL INTO ONE OR OTHER OF THESE TWO CATEGORIES. THERE IS NO THIRD CATEGORY INVOLVED IN THIS QUESTION.

5. IN ADDITION, THE DETERMINATION OF THIS SECONDARY QUESTION MUST BE MADE AS OF THE DATE THE APPLICATION IS MADE, SINCE THE APPLICANT'S MEMBERSHIP POSITION IS DETERMINED AS OF THAT DATE. THE FACTS AVAILABLE AS OF THAT DATE COVER THE WHOLE EMPLOYMENT HISTORY OF EACH INDIVIDUAL EMPLOYEE. THE BOARD, HOWEVER, HAS USUALLY TAKEN INTO CONSIDERATION ONLY THAT PERIOD PRECEDING THE APPLICATION WHICH HAS BEEN FOUND TO BE BOTH MANAGEABLE AND REPRESENTATIVE. WHILE NO FIXED PERIOD HAS BECOME THE UNIVERSAL RULE, IT IS INTERESTING TO NOTE THAT IN THE CASE OF CHAIN GROCERY STORES AND SUPERMARKETS A DEFINITE PATTERN HAS DEVELOPED. THE PERIOD OF ONE MONTH IMMEDIATELY PRECEDING THE DATE OF THE MAKING OF THE APPLICATION HAS BEEN FOUND TO BE REPRESENTATIVE AND IS USUALLY THE PERIOD LOOKED AT TO DETERMINE WHETHER THE EMPLOYEES ARE TO BE INCLUDED IN THE FULL-TIME OR PART-TIME BARGAINING UNIT. SUCH ONE MONTH PERIOD WHICH IS CONSIDERED FOR THE PURPOSE OF DETERMINING WHICH CLASS OF EMPLOYEE A PERSON IS, HAPPILY CORRESPONDS WITH THE ONE MONTH PERIOD USED TO DETERMINE WHETHER OR NOT A PERSON IS AN EMPLOYEE FOR THE PURPOSE OF THE COUNT. HOWEVER, NO SIMILAR PATTERN HAS EVOLVED IN OTHER INDUSTRIES.

6. IN ORDER TO MAKE THIS SECONDARY DETERMINATION, IN INDUSTRIES APART FROM THE CHAIN GROCERY STORE INDUSTRY, IT IS THE BOARD'S EXPERIENCE THAT IT WOULD BE USEFUL TO LOOK AT THE PERIOD OF SEVEN WEEKS IMMEDIATELY PRECEDING THE MAKING OF AN APPLICATION AS BEING A MANAGEABLE REPRESENTATIVE PERIOD IN THE VAST MAJORITY OF CASES. THEREFORE, IF SUCH REPRESENTATIVE PERIOD IS USED AND A PERSON WAS EMPLOYED FOR FOUR OR MORE OF THE SEVEN WEEKS UNDER CONSIDERATION FOR NOT MORE THAN 24 HOURS PER WEEK, THE BOARD WOULD THEN BE IN A POSITION TO FIND THAT THE PERSON WAS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. IF, ON THE OTHER HAND, A PERSON WAS EMPLOYED FOR FOUR OR MORE OF THE SEVEN WEEKS UNDER CONSIDERATION FOR MORE THAN 24 HOURS PER WEEK, THE BOARD WOULD BE ABLE TO FIND THAT THE PERSON PROPERLY BELONGS IN THE "FULL-TIME" BARGAINING UNIT. IT IS, OF COURSE, RECOGNIZED THAT A PERSON MAY MOVE FROM A FULL-TIME BARGAINING UNIT TO A PART-TIME BARGAINING UNIT DEPENDING ON WHAT PERIOD OF EMPLOYMENT IS CONSIDERED. THE FIXING OF A REASONABLE FIRM PERIOD TO BE CONSIDERED BY THE BOARD IN MAKING SUCH A DETERMINATION HAS THE ADVANTAGE OF CONSISTENCY WHICH WOULD PERMIT THE PARTIES TO KNOW IN ADVANCE WHAT PERSONS ARE TO BE CONSIDERED.

7. IN THE INSTANT CASE, HOWEVER, THE PARTIES WERE INVOLVED IN AN EARLIER APPLICATION (FILE NO. 12583-66-R, MARCH 9TH, 1967) WHICH DEALT WITH THE FULL-TIME BARGAINING UNIT. IN THAT CASE, THE BOARD CONSIDERED A PERIOD OF SIX WEEKS PRIOR TO THE MAKING OF THAT APPLICATION FOR THE PURPOSE OF DETERMINING WHO BELONGED IN THE "FULL-TIME" BARGAINING UNIT.



FOR REASONS OF CONSISTENCY, THE BOARD WILL ALSO CONSIDER THE PERIOD OF SIX WEEKS PRIOR TO THE MAKING OF THE INSTANT APPLICATION FOR THE PURPOSE OF DETERMINING WHICH PERSONS BELONGED IN THE RESPONDENT'S "PART-TIME" BARGAINING UNIT. IN MAKING ITS DETERMINATION, THE BOARD NOTES THAT SOME OF THE PERSONS UNDER CONSIDERATION HAVE MOVED FROM THE "PART-TIME" TO THE "FULL-TIME" BARGAINING UNIT BETWEEN THE TIME OF THE EARLIER APPLICATION AND THE TIME OF THE INSTANT APPLICATION.

8. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT JEAN ANTUMA, GERALDINE McKEEGAN AND MONICA COOPER ARE NOT EMPLOYEES OF THE RESPONDENT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT DESCRIBED BELOW.

9. HAVING APPLIED THE BOARD'S TEST TO BOTH ISSUES REFERRED TO ABOVE TO THE FACTS OF THIS CASE, FOR THE PURPOSE OF CLARITY THE BOARD DECLARES THAT THE FOLLOWING TWENTY PERSONS (OF WHOM THE APPLICANT HAS CLAIMED ELEVEN AS MEMBERS) ARE INCLUDED ON THE LIST OF EMPLOYEES OF THE RESPONDENT, AT THE TIME THIS APPLICATION WAS MADE, IN THE BARGAINING UNIT HEREINAFTER DESCRIBED:

JEAN ARMSTRONG	L. RICHARDSON	CATHERINE MYERS
CLARA BATSFORD	JOAN VELLA-ZARB	ELIZABETH ROSS
PAULINE BENOIT	BONNIE BLANCHARD	SHIRLEY ANN PARRISH
EMMA FRENCH	ENID JOHNSON	SUSAN SHEFF
BONNIE FURTAH	ALICE LABA	R. M. EWING
VIRGINIA MAY	MARILYN McLELLAN	KAY SMITH
MARGARET REGIS	EDNA MUXLOW	

10. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, OFFICE STAFF, AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 9TH, 1967 WHEREBY THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

13. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

12903-66-R: CANADIAN UNION OF SHIPBUILDING AND MARINE WORKERS (C.N.T.U.)  
(APPLICANT) V. COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING  
& ENGINEERING LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA,  
LOCAL 6320 (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: IAN G. SCOTT, J.A. RYDER AND W. SUNSTRUM FOR THE APPLICANT; B. STEWART AND G. BRANIFF FOR THE RESPONDENT; AND J.H. OSLER, Q.C., L.A. MACLEAN, D.M. STOREY, H. GARGREEVE AND E. HURST FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 9, 1967.

2. THIS IS AN APPLICATION FOR CERTIFICATION BY AN APPLICANT WHICH IS BEFORE THE ONTARIO LABOUR RELATIONS BOARD FOR THE FIRST TIME. ACCORDINGLY, IT WAS CALLED UPON TO PROVE ITS STATUS AS A TRADE UNION. EVIDENCE AND ARGUMENT WAS HEARD ON THIS QUESTION.

3. IN SOME RESPECTS THE EVIDENCE BEFORE THE BOARD IS NOT THE BEST EVIDENCE AND, IN THE CASE OF BELL, CONTAINED SOME CONTRADICTIONS. HOWEVER, WHEN THE EVIDENCE AS A WHOLE IS CONSIDERED, WE ARE SATISFIED THAT THE STEPS TAKEN BY EMPLOYEES OF THE RESPONDENT TO FORM A TRADE UNION MEET THE GENERAL REQUIREMENTS OF THE BOARD.

4. IT WAS ARGUED BY COUNSEL FOR THE INTERVENER THAT, BECAUSE OF THE ASSISTANCE RENDERED BY A BUSINESS AGENT OF THE CONFEDERATION OF NATIONAL TRADE UNIONS, HEREINAFTER REFERRED TO AS THE "C.N.T.U.", AND HAVING REGARD TO CERTAIN PROVISIONS IN THE APPLICANT'S CONSTITUTION REFERRING TO THE C.N.T.U., IT WAS NOT INTENDED TO CREATE AN INDEPENDENT ORGANISATION, BUT, RATHER, WHAT HE TERMED A "C.N.T.U. ORGANIZATION". UNQUESTIONABLY THE C.N.T.U. WAS ACTIVE IN PROCURING THE FORMATION OF THE APPLICANT. THERE SEEMS NO DOUBT, TOO, THAT IT WAS INTENDED THAT, ONCE IN EXISTENCE, THE APPLICANT WOULD APPLY FOR AFFILIATION WITH THE C.N.T.U. AND THE EVIDENCE IS THAT AFFILIATION DID TAKE PLACE ON THE REQUEST OF THE APPLICANT.

5. HOWEVER, WE ARE UNABLE TO CONCLUDE THAT THESE ACTIONS IN THEMSELVES TAKE AWAY THE INDEPENDENT CHARACTER OF THE APPLICANT, NOR IN OUR VIEW DO THESE ACTIONS, TOGETHER WITH THE PROVISIONS IN THE APPLICANT'S CONSTITUTION

REFERRING TO THE C.N.T.U., BRING ABOUT SUCH A RESULT. WHILE THESE PROVISIONS UNDOUBTEDLY REFLECT THE FACT THAT AFFILIATION IS INTENDED, THEY ARE NOT OF SUCH A SERIOUS NATURE THAT, IF AFFILIATION DID NOT COME ABOUT, THE ORGANIZATION COULD NOT CONTINUE TO FUNCTION UNDER ITS CONSTITUTION. IN OTHER WORDS, WE CONCLUDE THAT THE APPLICANT CAME INTO EXISTENCE AS AN INDEPENDENT ORGANIZATION AND THAT ALTHOUGH IT WAS INTENDED THAT IT SHOULD SEEK AFFILIATION AND DID IN FACT SEEK AFFILIATION WITH THE C.N.T.U., THIS DOES NOT DETRACT FROM ITS ORIGINAL CHARACTER. IN THESE CIRCUMSTANCES, THERE IS NO NEED FOR THE BOARD TO DEAL WITH THE QUESTION OF THE STATUS OR CONSTITUTION OF THE C.N.T.U. IT IS INTERESTING TO NOTE THAT THIS APPEARS TO ACCORD WITH AN EARLIER DECISION OF THE BOARD IN THE NOTRE-DAME HOSPITAL OF HAWKESBURY CASE O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 525.

6. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

7. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING. THE PURPOSE OF THE HEARING WILL BE TO ENTERTAIN THE REPRESENTATIONS OF THE INTERVENER WITH RESPECT TO THE FORM 8 FILED BY THE APPLICANT AND, SUBJECT TO THE REPRESENTATIONS OF THE PARTIES, TO PERMIT THE APPLICANT TO CALL EVIDENCE WITH RESPECT TO ITS MEMBERSHIP EVIDENCE AS OUTLINED AT THE LAST HEARING. IF THE BOARD DECIDES TO ALLOW THE APPLICANT TO CALL THIS EVIDENCE, THEN THAT WILL BE THE FIRST ORDER OF BUSINESS, FOLLOWED BY ARGUMENT, INCLUDING ARGUMENT ON THE QUESTION OF FORM 8. WHILE THE OTHER PARTIES WILL OR COURSE BE ENTITLED TO CALL EVIDENCE RELATING TO THIS ISSUE, IT IS NOT INTENDED AT THE NEXT HEARING TO HEAR EVIDENCE RESPECTING CONDITIONAL OR "NON" PAYMENT.

8. AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES, THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR HEARING IN COLLINGWOOD.

12923-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JONES & LAUGHLIN MINING COMPANY, LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: D. M. STOREY AND D. HUNTER FOR THE APPLICANT, PURDY CRAWFORD, ROLAND DUROCHER, JOHN MERRELL AND A. MILLER FOR THE RESPONDENT, G. H. WAGNER FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:

MAY 8, 1967.

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2. THERE WAS FILED IN THIS MATTER A DOCUMENT SIGNED BY EMPLOYEES OF THE RESPONDENT IN OPPOSITION TO THIS APPLICATION. MR. WAGNER, ONE OF THE

RESPONDENT'S EMPLOYEES, TESTIFIED CONCERNING THE ORIGATION AND PREPARATION OF THE DOCUMENTS AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED. THE BOARD IS SATISFIED WITH THE EVIDENCE CONCERNING THE MANNER IN WHICH A SUFFICIENT NUMBER OF THE PETITIONS CAME TO BE SIGNED SO THAT IF EVERYTHING ELSE WAS IN ORDER A REPRESENTATION VOTE WOULD BE REQUIRED IN THIS MATTER. HOWEVER, THE EVIDENCE CONCERNING THE FACTS WHICH LED TO THE ORIGATION OF THE PETITIONS IS A MATTER OF CONCERN TO THE BOARD. MR. WAGNER'S IMMEDIATE SUPERVISOR, MR. MORTSON, APPROACHED HIM DURING THE APPLICANT'S CAMPAIGN AND MADE INQUIRIES AS TO WHETHER OR NOT HE HAD JOINED THE UNION. AS THE APPLICANT'S ORGANIZING CAMPAIGN PROCEEDED, MR. MORTSON REACTED TO THE CAMPAIGN IN SUCH A MANNER AS TO CAUSE THE EMPLOYEES UNDER HIS CONTROL TO BE AWARE OF HIS OPPOSITION TO THE UNION. THE EXACT DETAILS OF HIS CONDUCT WERE NOT DISCLOSED TO THE BOARD, HOWEVER HE ACTED IN SUCH A MANNER AS TO CAUSE THE EMPLOYEES SUCH CONCERN THAT THEY FELT REQUIRED TO JUSTIFY THEIR ACTIVITIES. ONE OF THE PERSONS WHO SIGNED THE DOCUMENTS, BUT WHO DID NOT TESTIFY, CAUSED THE EMPLOYEES TO GO TO MR. MORTSON IN ORDER TO ASSURE MR. MORTSON THAT IT WAS NOT BECAUSE OF HIM PERSONALLY THAT THE EMPLOYEES HAD SOUGHT UNION REPRESENTATION. DURING THE COURSE OF THIS MEETING WITH MR. MORTSON, WHEN THE EMPLOYEES TENDERED THEIR APOLOGIES TO HIM FOR BRINGING THE UNION IN, HE RELATED A STORY TO THEM TO THE EFFECT THAT THE SITUATION WAS SIMILAR TO A DRUNKEN DRIVER WHO, WHILE DRIVING ON THE WRONG SIDE OF THE ROAD, RAN OVER A PEDESTRIAN. THE FACT THAT THE DRUNKEN DRIVER WAS SUBSEQUENTLY SORRY FOR HIS ACTION WOULD NOT HAVE CURED ANYTHING AS THE PEDESTRIAN WOULD STILL BE DEAD. MR. WAGNER AGREED THAT THE IMPLICATION OF THIS STORY AS APPLIED TO THE FACTS OF THIS CASE WAS THAT "THE DAMAGE HAD BEEN DONE".

3. FOLLOWING THE MEETING WITH MR. MORTSON, THE EMPLOYEES DISCUSSED THE MATTER AND SET OUT TO UNDO THE DAMAGE BY WRITING TO THE BOARD EXPRESSING THEIR OPPOSITION TO THE APPLICANT UNION.

4. HAVING REGARD TO ALL THE CIRCUMSTANCES SURROUNDING THE ORIGATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION WHICH WERE IDENTIFIED BY MR. WAGNER, FOR REASONS GIVEN IN THE PIGOTT MOTORS (1961) LTD. CASE, 63 CLLC ¶16,264 @ p. 1130, THE BOARD IS OF OPINION THAT HAD MR. MORTSON NOT INTERVENED IN THE MANNER IN WHICH HE DID THE EMPLOYEES UNDER HIS CONTROL WOULD NOT HAVE OBJECTED TO THIS APPLICATION.

5. THE BOARD IS THEREFORE NOT PREPARED TO HOLD THAT THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

6. MR. S.G. GRIZZLE, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF LLOYD DOUPE A PERSON CLASSIFIED BY THE RESPONDENT AS CHIEF WAREHOUSEMAN, KEITH OLIVER A PERSON CLASSIFIED BY THE RESPONDENT AS MINING ENGINEER, AND ALLEN MURPHY A PERSON CLASSIFIED BY THE RESPONDENT AS ASSISTANT MINING ENGINEER.



DECISION OF BOARD MEMBER J. E. C. ROBINSON:

MAY 8, 1967.

I DISSENT.

I WOULD HAVE ALLOWED THE PETITION AND DIRECTED THAT A VOTE BE HELD IN ORDER THAT THE TRUE WISHES OF THE EMPLOYEES MIGHT BE ASCERTAINED. IN MY RESPECTFUL OPINION, THE DENIAL OF THE PETITION BY THE MAJORITY IS NOT FOUNDED IN THE EVIDENCE PRESENTED AT THE HEARING, BUT IS BASED UPON A CONJECTURE AND SUPPOSITION TAKEN FROM LACK OF EVIDENCE. INDEED, THE PREVIOUS DECISION IN THE PIGOTT MOTORS (1961) LTD. CASE, USED BY THE MAJORITY IN SUPPORT OF THEIR DECISION, WOULD TEND TO SUPPORT MY ASSUMPTION.

I WOULD AGREE WITH THAT PORTION OF THE MAJORITY DECISION WHICH EXPRESSES THAT THEY ARE SATISFIED WITH THE EVIDENCE CONCERNING THE MANNER IN WHICH A SUFFICIENT NUMBER OF THE PETITIONS CAME TO BE SIGNED. THE QUESTION, THEREFORE, IS WHETHER OR NOT THERE WAS MANAGEMENT INFLUENCE TO THE EXTENT THAT THE PETITION DOES NOT TRULY AND ACCURATELY REFLECT THE VOLUNTARY WISHES OF THE SIGNATORIES.

THE EVIDENCE OF THE SPOKESMAN FOR THE PETITIONERS WAS THAT HE, ALONG WITH A NUMBER OF THE OTHER SIGNATORIES TO THE PETITION, APPROACHED THEIR IMMEDIATE SUPERIOR TO ASSURE HIM THAT THEIR SIGNING OF UNION CARDS HAD NOTHING TO DO WITH ANY PERSONAL ANIMOSITY TOWARDS HIM. THEY DID THIS BECAUSE HE SEEMED TO BE DEJECTED, ALTHOUGH HE EXPRESSED NO CONCERN TO ANYONE. IT SHOULD BE HERE NOTED THAT THEY DID NOT ATTEND UPON THEIR SUPERIOR FOR THE PURPOSE OF ADVISING HIM THAT THEY WERE SORRY FOR HAVING JOINED THE UNION; THEY ATTENDED ONLY FOR THE PURPOSE OF ASSURING HIM THAT THEIR ACTIONS WERE NOT A PERSONAL AFFRONT TO HIM. THE FACTS OF THE STORY RELATED TO THE EMPLOYEES IS CORRECT, BUT THE IMPLICATION THAT WAS TO BE DRAWN FROM THE STORY, I.E., "THE DAMAGE HAD BEEN DONE", ARE THE WORDS OF THE VICE-CHAIRMAN AS HE PUT THE QUESTION TO THE WITNESS. IT SHOULD BE ALSO NOTED THAT THEIR SUPERIOR INDICATED THAT DESPITE THEIR MEMBERSHIP THERE WOULD BE NEITHER DISCRIMINATION NOR FAVOUR SHOWN TO THEM FOR SUCH CHOICE.

ON THIS EVIDENCE, THE MAJORITY OF THE BOARD DREW CERTAIN INFERENCES, FROM WHICH IT CAME TO THE CONCLUSION THAT THE PETITION WAS NOT A VOLUNTARY EXPRESSION BY THE EMPLOYEES.

HOWEVER, I AM NOT ABLE TO COME TO THIS CONCLUSION. EACH PETITIONER WROTE A LETTER TO THE BOARD ASKING THAT THEY NOT BE COUNTED AS MEMBERS OF THE APPLICANT. EACH INDICATED THAT THEIR DECISION WAS BASED ON A REFLECTION OF THE BENEFITS TO BE DERIVED FROM A UNION.

SURELY THE BOARD IS EXTENDING THE QUESTION OF MANAGEMENT INFLUENCE TOO FAR WHEN IT ATTEMPTS TO DRAW CONCLUSIONS FROM AND GIVE REASONS FOR THE Demeanour OF A MEMBER OF MANAGEMENT WHILE HE IS WORKING IN HIS OFFICE. ONE COULD ONLY SPECULATE AS TO THE RESULT OF THIS DECISION IF THE MEMBER OF MANAGEMENT HAD APPEARED ELATED RATHER THAN DEJECTED.

12937-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V.  
THOMPSON-HEYLAND LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES  
(OBJECTORS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND P.J. O'KEEFE.

DECISION OF THE BOARD: MAY 30, 1967.

1. BY DECISION DATED APRIL 24TH, 1967, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER. ON MAY 3RD, 1967, IN ACCORDANCE WITH THE REGISTRAR'S INSTRUCTIONS, THE PARTIES MET FOR THE PURPOSE OF MAKING ARRANGEMENTS FOR THE VOTE. BY LETTER OF THE SAME DATE, SIGNED BY REPRESENTATIVES OF BOTH THE APPLICANT AND THE RESPONDENT, THE PARTIES AGREED UPON THE LOCATION, THE VOTING HOUR AND ALTERNATIVE DATES FOR THE TAKING OF THE VOTE. THE PARTIES ALSO AGREED ON THE VOTERS' LIST AND THE NAMES OF THEIR RESPECTIVE SCRUTINEERS. THE VOTE WAS HELD ON MAY 12TH IN COMPLIANCE WITH THE ARRANGEMENTS ESTABLISHED IN THE ABOVE REFERRED TO LETTER OF MAY 3RD.

2. BY LETTER DATED MAY 15TH, 1967, COUNSEL FOR THE RESPONDENT FILED OBJECTIONS TO THE REPORT OF THE RETURNING OFFICER DATED MAY 12TH, 1967. COUNSEL IN HIS LETTER STATES THAT AN EMPLOYEE OF THE RESPONDENT, G. APPELYARD, COMMENCED HIS SHIFT ON MAY 12TH AT 6:00 P.M. AND THAT ANOTHER EMPLOYEE OF THE RESPONDENT, S. STARR, WAS ON HIS DAY OFF ON MAY 12TH, BUT COMMENCED HIS SHIFT AT 6:00 A.M. ON MAY 13TH. THE AGREED VOTING HOUR DURING WHICH THE VOTE WAS TAKEN WAS FROM 4:00 P.M. TO 5:00 P.M. ON MAY 12TH. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE NAMES OF THE TWO EMPLOYEES SHOULD NOT HAVE BEEN REMOVED FROM THE VOTERS' LIST, PURSUANT TO SECTION 7(4) OF THE LABOUR RELATIONS ACT.

3. LEAVING ASIDE FOR THE MOMENT ANY CONSIDERATION AS TO THE MERITS OF COUNSEL FOR THE RESPONDENT OBJECTIONS BASED ON AN INTERPRETATION OF THE LANGUAGE OF SECTION 7(4) OF THE ACT, THE FACT IS THAT IMMEDIATELY AFTER THE TAKING OF THE VOTE ON MAY 12TH AND PRIOR TO THE COUNTING OF THE BALLOTS A WRITTEN AGREEMENT CONCERNING THE REMOVAL OF THE NAMES OF APPELYARD AND STARR FROM THE VOTERS' LIST WAS ENTERED INTO BY REPRESENTATIVES OF THE APPLICANT AND THE RESPONDENT. IN THE CASE OF THE RESPONDENT, THIS AGREEMENT WAS SIGNED BY G. E. CHURCH WHO IS IDENTIFIED IN THE CORRESPONDENCE ON FILE AS GENERAL MANAGER OF THE RESPONDENT COMPANY. THE AGREEMENT READS:

WITH RESPECT TO THE REPRESENTATION VOTE  
BEING CONDUCTED AT THOMPSON-HEYLAND  
LUMBER LTD., BURKS FALLS, ON FRIDAY,  
MAY 12TH, 1967, WE THE UNDERSIGNED AGREE  
THAT THE NAMES OF G. APPELYARD AND  
S. STARR BE REMOVED FROM THE VOTERS'  
LISTS WITHIN THE PROVISIONS OF SECTION  
7(4) OF THE ACT.

4. IN LIGHT OF THE ABOVE WRITTEN AGREEMENT, THE RESPONDENT IS NOT NOW IN ANY POSITION TO OBJECT TO THE REMOVAL OF THE NAMES OF APPELYARD AND STARR FROM THE REVISED VOTERS' LIST. ACCORDINGLY, THE BOARD ACCEPTS THE FIGURE OF 54 SHOWN IN THE RETURNING OFFICER'S REPORT AS THE NUMBER OF PERSONS ON THE REVISED VOTERS' LIST FOR PURPOSES OF DETERMINING WHETHER MORE THAN FIFTY PER CENT OF THE BALLOTS CAST IN THE REPRESENTATION VOTE ARE IN FAVOUR OF THE APPLICANT.

5. WE WOULD POINT OUT, HOWEVER, THAT IF THE BOARD HAD BEEN CALLED UPON TO MAKE ANY DETERMINATION, AND ASSUMING THE INFORMATION CONCERNING APPELYARD AND STARR, AS SET OUT IN THE RESPONDENT'S LETTER OF MAY 15TH, TO BE CORRECT, IT WOULD APPEAR THAT BOTH EMPLOYEES WERE ABSENT FROM WORK DURING VOTING HOURS WITHIN THE MEANING OF SECTION 7(4) OF THE ACT, AND THAT HAVING FAILED TO CAST THEIR BALLOTS THEY WERE NOT ELIGIBLE FOR INCLUSION ON THE REVISED VOTERS' LIST.

6. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

8. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

12972-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) v. PETER AUSTIN MANUFACTURING COMPANY, DIVISION OF KELTON CORPORATION LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND O. HODGES.

APPEARANCES AT HEARING: TOM CORRIGAN, BRUCE P. DAVIS AND J. SACK FOR THE APPLICANT, AND R. D. PERKINS AND WALTER GOSLING FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 18, 1967.

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3. THIS IS AN APPLICATION FOR CERTIFICATION. IT IS CONTENDED BY THE RESPONDENT THAT THE APPLICATION IS UNTIMELY. IN SUPPORT OF THIS CONTENTION THE RESPONDENT RELIED UPON ITS PRACTICE OF HIRING SOME FIFTY PERSONS FOR PRODUCTION WORK DURING THE PERIOD BETWEEN JULY AND DECEMBER EACH YEAR.

4. THE RESPONDENT'S OPERATIONS ARE CONDUCTED AT TWO LOCATIONS IN METROPOLITAN TORONTO. AT 326 DAVENPORT ROAD THE RESPONDENT EMPLOYES SOME

TWENTY-FOUR PERSONS ON A YEAR-ROUND BASES, ENGAGED IN THE MANUFACTURE OF PLASTICINE AND TOY BUBBLE SETS. AT 278 DAVENPORT ROAD THE RESPONDENT EMPLOYES SOME EIGHTEEN PERSONS ON A YEAR-ROUND BASIS, ENGAGED IN RESEARCH AND DEVELOPMENT OF SMALL PLASTIC TOYS. WORK AT THIS LOCATION IS UNDER COMMON MANAGEMENT. THERE IS ONE PAYROLL AND THERE IS AN INTERCHANGE OF EMPLOYEES AS BETWEEN THE TWO LOCATIONS. THEY ARE TREATED AS A SINGLE OPERATION. DURING THE PERIOD FROM JULY AND DECEMBER EACH YEAR APPROXIMATELY FIFTY PERSONS ARE HIRED TO WORK AT 278 DAVENPORT ROAD ON THE PRODUCTION OF PLASTIC TOYS, PRINCIPALLY INTENDED FOR THE CHRISTMAS MARKET. THE EIGHTEEN YEAR-ROUND EMPLOYEES TRAIN THE PRODUCTION WORKERS AND ACT IN A LEAD HAND OR SENIOR EMPLOYEE CAPACITY DURING THE MONTHS OF PRODUCTION. SUCH EVENTS HAVE TAKEN PLACE FOR AT LEAST THE PAST FIVE YEARS.

5. THE PARTIES AGREED THAT THE GROUP OF APPROXIMATELY FIFTY PERSONS HIRED AS PRODUCTION WORKERS FOR ROUGHLY HALF OF EACH YEAR OUGHT NOT TO BE CONSIDERED AS A SEPARATE UNIT OF "SEASONAL" EMPLOYEES, AND THE BOARD AGREES WITH THIS VIEW. FURTHER, IT CANNOT BE SAID THAT THIS IS A CASE WHERE THE EMPLOYER IS YET TO BUILD-UP ITS EMPLOYMENT FORCE TO NORMAL OPERATING LEVELS FOLLOWING THE COMMENCEMENT OF OPERATIONS. THE EMPLOYER HERE HAS A WELL-ESTABLISHED OPERATION WHICH HAS BEEN CARRIED ON FOR MANY YEARS. IT WOULD APPEAR RATHER TO BE A MATTER OF THE EMPLOYMENT FORCE BEING SUBJECT TO REGULAR CYCLICAL FLUCTUATION.

6. WHILE A VERY LARGE INCREASE IN THE RESPONDENT'S WORK FORCE IS EXPECTED TO TAKE PLACE DURING THE SUMMER MONTHS, IT IS NEVERTHELESS OUR OPINION THAT THERE WAS A SUBSTANTIAL AND REPRESENTATIVE NUMBER OF PERSONS IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION. THIS BEING THE CASE, THE RIGHT OF PERSONS PRESENTLY EMPLOYED BY THE RESPONDENT TO BARGAIN COLLECTIVELY THROUGH THE AGENT OF THEIR CHOICE MUST BE ACKNOWLEDGED.

7. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12998-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. SEAWAY APPAREL LTD. (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
J. E. C. ROBINSON AND O. HODGES.



APPEARANCES AT HEARING: G. CHARNEY, S. LINDS AND W. GELINAS FOR THE APPLICANT, AND PIERRE GENEST AND DAVID COHEN FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 16, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THIS APPLICATION WAS MADE ON APRIL 17TH, 1967 AND THE TERMINAL DATE SET BY THE REGISTRAR, PURSUANT TO SECTION 2 OF THE BOARD'S RULES OF PROCEDURE, WAS APRIL 25TH, 1967. THE APPLICATION WAS HEARD ON MAY 2ND, 1967. ON FRIDAY, APRIL 28TH, COUNSEL FOR THE RESPONDENT FILED WITH THE BOARD CERTAIN ALLEGATIONS RELATING TO THE APPLICANT'S METHOD OF OBTAINING EVIDENCE OF MEMBERSHIP WITH RESPECT TO CERTAIN OF THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION. COUNSEL FOR THE APPLICANT DID NOT RECEIVE THESE ALLEGATIONS IN SUFFICIENT TIME TO ALLOW HIM TO BE PREPARED TO MEET THEM AT THE HEARING.

4. COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT HE HAD MADE HIS ALLEGATIONS AS SOON AS HE HAD BEEN INSTRUCTED WITH RESPECT TO THEM, BUT HE ADMITTED THAT THE OFFICIALS OF THE RESPONDENT "HAD AN INKLING" OF THEM AT THE TIME THE APPLICATION WAS MADE, AND HE GAVE NO FURTHER EXPLANATION TO THE BOARD FOR THE LATE FILING OF THE ALLEGATIONS.

5. IN THE FLECK MANUFACTURING LIMITED CASE, 62 C.L.L.C. 1046, THE BOARD STATED:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPORPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

THE MATERIAL PROVISIONS OF THE RULES THERE REFERRED TO ARE NOW CONTAINED IN SECTION 47 (1) AND (2) OF THE BOARD'S RULES OF PROCEDURE. THESE PROVISIONS ARE AS FOLLOWS:

47.--(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,

(A) INCLUDE IN THE APPLICATION OR COMPLAINT; OR

(B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

(2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

6. HAVING REGARD TO THE UNTIMELY NATURE OF THE RESPONDENT'S ALLEGATIONS AND TO THE ABSENCE OF SATISFACTORY EXPLANATION FOR THEIR LATENESS, IT IS OUR RULING THAT THESE ALLEGATIONS WILL NOT BE ENTERTAINED.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13008-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. UNIFIN DIVISION OF KEEPRITE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: R. WHITE, L. RUDRUM AND G. SPECHT FOR THE  
APPLICANT, B. H. STEWART AND F. S. BROWN FOR THE RESPONDENT, C. S.  
STEVENSON FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE: MAY 17, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, RESEARCH DEVELOPMENT LABORATORY STAFF, METHODS TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THERE WAS FILED WITH THE BOARD A HAND PRINTED STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THIS APPLICATION (HEREINAFTER REFERRED TO AS THE PETITION) SIGNED BY THIRTY-FIVE PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, EIGHT OF WHOM ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. THE PETITION MUST CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP OF ALL EIGHT OF THE PERSONS CLAIMED IN MEMBERSHIP BY THE APPLICANT, OTHERWISE THE APPLICANT WOULD STILL HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR OVER FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AND WOULD BE ENTITLED TO OUTRIGHT CERTIFICATION.

4. FRANK HILLMAN WHO IS A LEAD HAND IN THE SHIPPING DEPARTMENT OF THE RESPONDENT TESTIFIED THAT HE PREPARED THE PETITION AND THAT HE WITNESSED THE FIRST TWENTY-NINE SIGNATURES THAT APPEAR UPON IT. HIS EVIDENCE IS THAT HE STATIONED HIMSELF IN THE STOCK ROOM, A PLACE NORMALLY OUT OF BOUNDS FOR EMPLOYEES, AND THAT DURING A PERIOD OF APPROXIMATELY HALF AN HOUR MOST OF THE EMPLOYEES WHOSE SIGNATURES HE WITNESSED LEFT THEIR PLACES OF WORK IN THE PLANT, CAME TO THE STOCK ROOM AND SIGNED THE PETITION. HE TESTIFIED THAT NO MEMBERS OF MANAGEMENT WERE IN THE STOCK ROOM AT THE TIME WHEN HE WAS SECURING ANY OF THE SIGNATURES ON THE PETITION. ON THE SAME MORNING, AFTER SECURING THE SIGNATURES WHICH HE IDENTIFIED, HILLMAN'S EVIDENCE IS THAT HE GAVE THE PETITION TO ARTHUR STORRIE.

5. STORRIE, WHO IS A LEAD HAND IN THE MACHINE SHOP, TESTIFIED THAT HE SECURED THE LAST NINE SIGNATURES ON THE PETITION. THE FIRST THREE SIGNATURES WHICH HE CLAIMS TO HAVE SECURED WERE ALSO IDENTIFIED BY HILLMAN AS BEING SIGNATURES THAT HE SECURED. WHILE IT APPEARS FROM STORRIE'S EVIDENCE THAT HE SECURED ALL OF THE SIGNATURES WHICH HE WITNESSED IN THE PLANT DURING WORKING HOURS, HIS EVIDENCE AS TO THE TIME, THE DAYS AND THE PLACES WHERE HE SECURED THE SIGNATURES IS CONTRADICTORY AND THOROUGHLY CONFUSING. INDEED, HIS TESTIMONY AS TO THE SEQUENCE OF

EVENTS THAT OCCURRED IN CIRCULATING THE PETITION, IN PART, DEFIES LOGICAL EXPLANATION.

6. IN VIEW OF THE HIGHLY UNSATISFACTORY NATURE OF STORRIE'S EVIDENCE, THE BOARD IS NOT PREPARED TO PLACE ANY RELIANCE ON HIS TESTIMONY. MORE THAN ONE OF THE PERSONS WHOSE SIGNATURES WERE IDENTIFIED BY STORRIE ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. ACCORDINGLY, EVEN IF THE BOARD WERE SATISFIED THAT THE SIGNATURES WITNESSED BY HILLMAN CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT FOR THOSE PERSONS, THE APPLICANT WOULD STILL HAVE SUFFICIENT UNCONTESTED EVIDENCE OF MEMBERSHIP TO ENTITLE IT TO OUTRIGHT CERTIFICATION.

7. ON ALL THE EVIDENCE, THEREFORE, THE BOARD IS NOT SATISFIED THAT THE PETITION CIRCULATED IN OPPOSITION TO THE APPLICATION SUFFICIENTLY WEAKENS OR QUALIFIES THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: MAY 17, 1967.

1. I DISSENT.

2. THE BOARD'S THOROUGH AND SEARCHING ENQUIRY INTO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION IN OPPOSITION TO THIS APPLICATION AND SIGNED BY A GROUP OF EMPLOYEES IN THE BARGAINING UNIT DID NOT DISCLOSE EVEN A SUSPICION THAT MANAGEMENT WAS IN ANY WAY CONNECTED WITH IT. IN FACT, THERE ISN'T A JOT OF EVIDENCE THAT MANAGEMENT EVEN HAD KNOWLEDGE THAT THE PETITION EXISTED PRIOR TO THE TIME IT WAS FILED WITH THE BOARD. MOREOVER, NO EMPLOYEE WHO SIGNED THE PETITION HAS INFORMED THE BOARD THAT SUCH DOCUMENT DOES NOT REPRESENT HIS VOLUNTARY SIGNIFICATION IN WRITING THAT HE OPPOSES THE CERTIFICATION OF THE APPLICANT UNION.

3. ARTHUR STORRIE, AN EMPLOYEE IN THE BARGAINING UNIT, WAS UNDERSTANDABLY CONFUSED IN TRYING TO REMEMBER THE EXACT CIRCUMSTANCES, THE TIME, THE DAYS AND PLACES WHERE HE SECURED AND WITNESSED THE SIGNATURES OF CERTAIN EMPLOYEES BEING AFFIXED TO THE PETITION. A UNION REPRESENTATIVE WOULD ALSO BE UNDERSTANDABLY CONFUSED IF HE HAD TO RECALL BEFORE THE BOARD THE CIRCUMSTANCES, THE TIME, THE DAYS AND THE PLACES WHERE HE HAD SECURED THE SIGNATURE OF EACH EMPLOYEE ON AN APPLICATION OF MEMBERSHIP CARD. WE ARE NOT CONDUCTING A MEMORY CONTEST. THE BOARD HAS STATED IN A NUMBER OF DECISIONS THAT THE UNDERLYING PURPOSE OF ITS ENQUIRY IS TO ASCERTAIN IF THE HAND OF MANAGEMENT WAS ACTIVE IN THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION IN OPPOSITION TO THE APPLICATION.



IN THE INSTANT CASE, THE BOARD'S ENQUIRY UNCOVERED NO SUCH ACTIVITY BY THE RESPONDENT COMPANY.

4. IN THESE CIRCUMSTANCES, I WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED THAT A REPRESENTATION VOTE BE CONDUCTED BY SECRET BALLOT. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

13027-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL No. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. HURLEY TRANSPORT COMPANY LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: W. W. TILLER FOR THE APPLICANT, AND DONALD J. MCKILLOP, C. EARLE AND E. PLUNKETT FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 30, 1967.

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2. THE APPLICANT APPLIES FOR CERTIFICATION FOR A UNIT OF OFFICE EMPLOYEES IN THE EMPLOY OF THE RESPONDENT AT BROCKVILLE. THE RESPONDENT OBJECTS TO THE JURISDICTION OF THE BOARD ON THE GROUND THAT THE RESPONDENT'S UNDERTAKING IS ONE PROPERLY FALLING WITHIN THE LEGISLATIVE POWER OF THE PARLIAMENT OF CANADA BY VIRTUE OF SECTION 92(10)(A) OF THE BRITISH NORTH AMERICA ACT.

3. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF BOTH EXTRA-PROVINCIAL AND INTRA-PROVINCIAL HAULAGE OF FREIGHT. THE RESPONDENT IS PARTY TO A CONTRACT FOR HAULAGE OF FREIGHT TO THE UNITED STATES AND HOLDS LICENCES BOTH FROM THE ONTARIO DEPARTMENT OF TRANSPORT AND FROM THE INTERSTATE COMMERCE COMMISSION IN THE UNITED STATES, AUTHORIZING SUCH OPERATIONS. HAVING REGARD TO THESE FACTS, IT IS OUR OPINION THAT THE RESPONDENT'S UNDERTAKING IS ONE TO WHICH SECTION 92(10)(A) APPLIES, AND THAT THIS BOARD HAS NO JURISDICTION TO HEAR THE APPLICATION.

4. FOR THE REASONS GIVEN IN THE MCNEIL TRANSPORT LIMITED CASE, BOARD FILE No. 13028-67-R, THE BOARD FINDS THAT OFFICE WORK IS A NECESSARY AND INTEGRAL PART OF THE RESPONDENT'S UNDERTAKING.

5. FOR THE FOREGOING REASONS, IT IS OUR CONCLUSION THAT THIS BOARD LACKS JURISDICTION TO ENTERTAIN THE APPLICATION.

6. THESE PROCEEDINGS ARE HEREBY TERMINATED.

13028-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL No. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. MCNEIL TRANSPORT LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: W. W. TILLER FOR THE APPLICANT, AND  
DONALD J. MCKILLOP, C. EARLE AND E. PLUNKETT FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 30, 1967.

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2. THE APPLICANT APPLIES FOR CERTIFICATION FOR A UNIT OF OFFICE EMPLOYEES IN THE EMPLOY OF THE RESPONDENT AT BROCKVILLE. THE RESPONDENT OBJECTS TO THE JURISDICTION OF THE BOARD ON THE GROUND THAT THE RESPONDENT'S UNDERTAKING IS ONE PROPERLY FALLING WITHIN THE LEGISLATIVE POWER OF THE PARLIAMENT OF CANADA BY VIRTUE OF SECTION 92(10)(A) OF THE BRITISH NORTH AMERICA ACT.

3. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF BOTH INTER-PROVINCIAL AND INTRA-PROVINCIAL HAULAGE OF FREIGHT. APPROXIMATELY NINETY PER CENT OF ITS OPERATIONS INVOLVE THE CARTAGE OF FREIGHT BETWEEN THE PROVINCES OF ONTARIO AND QUEBEC. THERE IS NO DOUBT IN OUR MINDS THAT IN THESE CIRCUMSTANCES THE RESPONDENT'S UNDERTAKING IS ONE TO WHICH SECTION 92(10)(A) APPLIES, AND THAT THIS BOARD HAS NO JURISDICTION TO HEAR THE APPLICATION. IT WOULD APPEAR THAT THE BOARD DID ISSUE A CERTIFICATE WITH RESPECT TO A BARGAINING UNIT CONSISTING OF CERTAIN DRIVERS AND OTHERS IN THE EMPLOY OF THE RESPONDENT AT BROCKVILLE IN 1950. IT DOES NOT APPEAR FROM THE ENDORSEMENT OF THE RECORD IN THAT CASE, HOWEVER, THAT ANY CONSTITUTIONAL QUESTION WAS BROUGHT TO THE ATTENTION OF THE BOARD AT THAT TIME. IN ANY EVENT, THIS CASE MUST BE DETERMINED ON THE BASIS OF THE FACTS NOW PUT BEFORE THE BOARD.

4. THE APPLICANT HAS SUGGESTED THAT OFFICE EMPLOYEES AS SUCH WOULD COME WITHIN THE JURISDICTION OF THIS BOARD. WE CANNOT CONCLUDE, HOWEVER, THAT THE WORK ENGAGED IN BY THE RESPONDENT'S OFFICE EMPLOYEES CONSTITUTES IN ITSELF A DISTINCTIVE UNDERTAKING. THE QUESTION TO BE CONSIDERED WAS STATED BY LORD PORTER IN THE WINNER CASE, [1954] A.C. 541; (1954) 4 D.L.R. 67:-

THE QUESTION IS NOT WHAT OPERATIONS OF THE UNDERTAKING CAN BE STRIPPED FROM IT WITHOUT INTERFERING WITH THE ACTIVITY OF THEM; IT IS RATHER WHAT IS THE UNDERTAKING WHICH IS IN FACT BEING CARRIED ON. IS THERE ONE UNDERTAKING...?

IT IS CLEAR TO US, ON THE FACTS, THAT THE RESPONDENT'S UNDERTAKING CAN ONLY PROPERLY BE CHARACTERIZED FOR THE PURPOSE OF THIS APPLICATION AS THE INTER-PROVINCIAL HAULAGE OF FREIGHT. OFFICE WORK IS A NECESSARY AND INTEGRAL PART OF THIS UNDERTAKING.

5. FOR THE FOREGOING REASONS, IT IS OUR CONCLUSION THAT THIS BOARD LACKS JURISDICTION TO ENTERTAIN THE APPLICATION.

6. THESE PROCEEDINGS ARE HEREBY TERMINATED.

13040-67-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (APPLICANT)  
V. DOMTAR PULP & PAPER LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD  
PULP, SULPHITE & PAPER MILL WORKERS & ITS LOCAL #77 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: M. A. HEELEY FOR THE APPLICANT, J. B. O'REILLY,  
L. W. HEBERT AND D. BLAKELY FOR THE RESPONDENT, GILBERT HAY AND M. BYRNE  
FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 17, 1967.

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2. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT AT ST. CATHARINES AND HAS ASKED TO BE CERTIFIED IN ITS REGULAR CRAFT BARGAINING UNIT.

3. THE APPLICANT RELIES ON ITS HISTORY OF REPRESENTATION OF STATIONARY ENGINEERS AND IN PARTICULAR ON THE FACT THAT IN THE PULP AND PAPER INDUSTRY IT IS VERY COMMON FOR EMPLOYEES TO BE ORGANIZED ON CRAFT LINES.

4. THE APPLICANT ARGUED THAT THE STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT ARE ENTITLED TO BE REPRESENTED BY THE APPLICANT CRAFT UNION BECAUSE OF THE RECOGNIZED CRAFT STATUS OF STATIONARY ENGINEERS. IN ADDITION, THE APPLICANT URGED THE BOARD TO ADOPT AND FOLLOW THE WIDELY ACCEPTED PATTERN IN THE PULP AND PAPER INDUSTRY OF CRAFT BARGAINING UNITS.

5. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT ARE CURRENTLY REPRESENTED BY THE INTERVENER AND ARE PART OF AN OVERALL INDUSTRIAL BARGAINING UNIT. THE INTERVENER HAS REPRESENTED THE STATIONARY ENGINEERS AS PART OF THE INDUSTRIAL BARGAINING UNIT SINCE 1937. THE COLLECTIVE AGREEMENT COVERING THE STATIONARY ENGINEERS PROVIDES FOR BOTH MILL AND DEPARTMENT SENIORITY UNDER WHICH PROVISIONS ENGINEERS CAN AND HAVE BENEFITED. AT LEAST SEVEN PERSONS IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT WERE TRANSFERRED FROM OTHER DEPARTMENTS TO THE RESPONDENT'S STEAM PLANT. THE COLLECTIVE AGREEMENT COVERING THE STATIONARY ENGINEERS HAS A WAGE SCHEDULE COVERING THE CLASSIFICATIONS OF ENGINEERS AND HELPERS. A STATIONARY ENGINEER IS CURRENTLY A MEMBER OF THE EXECUTIVE OF THE INTERVENER UNION. WHILE A GREAT NUMBER OF COMPANIES IN THE PULP AND PAPER INDUSTRY HAVE BARGAINED ON A CRAFT BASIS, SUCH A PRACTICE IS BY NO MEANS EXCLUSIVE. NOT ONLY ARE THE STATIONARY ENGINEERS AT THE RESPONDENT'S ST. CATHARINES OPERATIONS BARGAINED FOR IN A UNIT WITH OTHER EMPLOYEES ON AN INDUSTRIAL BASIS, BUT IN ADDITION, THE OTHER FOUR PLANTS OPERATED BY THE RESPONDENT ARE COVERED BY INDUSTRIAL TYPE COLLECTIVE AGREEMENTS WHICH INCLUDE STATIONARY ENGINEERS.

6. HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE LILY CUP CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1961, P. 370, THE CANADA FOUNDRIES AND FORGINGS CASE (1961) C.C.H. CANADIAN LABOUR LAW REPORTER ¶16,203, C.L.S. 76-753, THE AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, BOARD FILE #1501-61-R, AND THE ONTARIO PAPER CO. LTD. CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1961, P. 376, AND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER AS EVIDENCED BY THE LENGTH OF CONTINUOUS REPRESENTATION BY THE INTERVENER OF THE STATIONARY ENGINEERS, THE SEPARATE WAGE SCHEDULES FOR STATIONARY ENGINEERS IN THE COLLECTIVE AGREEMENT, THE COMMUNITY OF INTEREST AND THE EXTENT OF TRANSFERS BETWEEN DEPARTMENTS, THE FACT THAT NOT ONLY AT THE LOCATION WITH WHICH WE ARE HERE CONCERNED BUT AT FOUR OTHER LOCATIONS OPERATED BY THE RESPONDENT, STATIONARY ENGINEERS ARE INCLUDED IN INDUSTRIAL TYPE BARGAINING UNITS, AND THE OPPOSITION TO THE APPLICATION BY THE INTERVENER, THE BOARD IS OF OPINION THAT IT SHOULD EXERCISE ITS DISCRETION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY FINDS THAT THE UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE.

7. THE APPLICATION IS THEREFORE DISMISSED.

13047-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527  
(APPLICANT) v. A. P. WOODWORKING SHOP (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 11, 1967.

1. IN THIS CASE THE APPLICANT REQUESTED THE BOARD TO TRANSFER ITS MEMBERSHIP EVIDENCE WHICH HAD BEEN FILED IN A PREVIOUS CASE INVOLVING A DIFFERENT EMPLOYER. THE PREVIOUS APPLICATION WAS DISMISSED FOLLOWING A REQUEST BY THE APPLICANT FOR LEAVE TO WITHDRAW IT. THE APPLICANT IN THE INSTANT CASE DID NOT FILE A FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY. ALTHOUGH A FORM 54 WAS FILED IN THE PREVIOUS CASE IT WOULD NOT MEET THE BOARD'S REQUIREMENTS IN THIS CASE BECAUSE THE INFORMATION CONTAINED IN PARAGRAPH TWO MIGHT WELL BE DIFFERENT AND THE BOARD ACTS ON THE BASIS OF THIS INFORMATION IF THE RESPONDENT DOES NOT FILE A REPLY, LIST OR SIGNATURES. IN THE PRESENT CASE THE RESPONDENT DID NOT FILE ANY DOCUMENTS WITH THE BOARD.

IN THESE CIRCUMSTANCES AND FOLLOWING OUR USUAL PRACTICE WHERE THERE HAS BEEN A FAILURE TO FILE FORM 54, THE APPLICATION IS DISMISSED.

#### INDEXED ENDORSEMENTS - TERMINATION

12680-66-R: CAMILLE VIGNEAULT (APPLICANT) v. THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS-LOCAL 89 (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND O. HODGES.



APPEARANCES AT HEARING: W. I. C. BINNIE AND CAMILLE VIGNEAULT FOR THE APPLICANT, AND L. A. MACLEAN AND W. ANDERSON FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 11, 1967.

1. A HEARING WAS HELD IN THIS MATTER ON APRIL 27TH, 1967, AT WHICH TIME EVIDENCE WAS HEARD RELATING TO THE ORIGATION AND CIRCULATION OF THE DOCUMENT FILED IN SUPPORT OF THE APPLICATION. HAVING REGARD TO THE WHOLE OF THAT EVIDENCE, WE ARE NOT SATISFIED THAT THE DOCUMENT REPRESENTS A VOLUNTARY EXPRESSION OF THE WISHES OF THE EMPLOYEES OF KAPUSKASING LAUNDRY & DRY CLEANERS LIMITED, WHOSE SIGNATURES APPEAR THEREON.

2. AS THE ENDORSEMENT OF THE RECORD, DATED APRIL 11TH, 1967, INDICATES, A QUESTION HAS ARISEN AS TO THE EFFECT TO BE GIVEN TO THE FACT THAT THE APPLICANT APPEARED TO BE REPRESENTED BY THE SAME FIRM OF SOLICITORS WHICH ACTS FOR THE EMPLOYER. CERTAIN EVIDENCE RELATING TO THIS QUESTION IS BEFORE THE BOARD. WE WOULD NOTE, IN PARTICULAR, THAT THE SOLICITOR HAD ACTED FOR THE APPLICANT PREVIOUSLY WITH RESPECT TO A REAL ESTATE TRANSACTION, AND THAT IT WAS CONVENIENT AND NATURAL THING FOR THE APPLICANT TO CONSULT HIM ON THIS MATTER. WHILE THE SOLICITOR OFFERED CERTAIN ADVICE TO THE APPLICANT, HE DID NOT MAKE THE APPLICATION ON HIS BEHALF OR REPRESENT HIM AT THE HEARING. WE SEE NOTHING UNTOWARD IN THESE CIRCUMSTANCES, AND THE CONCLUSION WHICH WE HAVE REACHED WITH RESPECT TO THIS MATTER IS NOT BASED IN ANY WAY ON THESE FACTS.

3. THE APPLICATION IS DISMISSED.

12987-67-R: HOWARD SAUNDERS, JOHN BOYD & STUART STEPHENSON (APPLICANTS)  
V. CANADIAN TRANSPORTATION WORKERS UNION, NO. 197 NATIONAL COUNCIL OF  
CANADIAN LABOUR (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: I. J. THOMSON FOR THE APPLICANTS, AND  
NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 16, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 45 OF THE LABOUR RELATIONS ACT.

2. SECTION 45(1) OF THE ACT PROVIDES AS FOLLOWS:-

IF A TRADE UNION FAILS TO GIVE THE EMPLOYER  
NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING  
CERTIFICATION OR IF IT FAILS TO GIVE NOTICE UNDER  
SECTION 40 AND NO SUCH NOTICE IS GIVEN BY THE

EMPLOYER, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

3. THE RESPONDENT WAS CERTIFIED ON OCTOBER 26TH, 1966, AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF NORRIS TRANSPORT LIMITED. AT THE HEARING IN THIS MATTER, THE REPRESENTATIVE OF THE APPLICANT STATED THAT TO THE BEST OF HIS KNOWLEDGE NO NOTICE TO BARGAIN HAD BEEN GIVEN BY THE RESPONDENT TO THE EMPLOYER WITHIN SIXTY DAYS FOLLOWING CERTIFICATION, AND THAT THERE HAD BEEN NO MEETINGS OR BARGAINING BETWEEN THE RESPONDENT AND THE EMPLOYER. NEITHER THE RESPONDENT NOR THE EMPLOYER ATTENDED THE HEARING, AND THESE STATEMENTS WERE NOT DENIED.

4. IN THE DOMINION STORES LIMITED CASE, (1956) C.C.H. CANADIAN LABOUR LAW REPORTER, 916,047, THE BOARD STATED:-

THE PURPOSE OF SECTION 43 [NOW SECTION 45] OF THE ACT IS TO PROTECT THE EMPLOYEES AND, IN A PROPER CASE, THE EMPLOYER AGAINST A UNION WHICH STAKES OUT A CLAIM TO REPRESENT CERTAIN EMPLOYEES AND THEN TAKES NO STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES. HOWEVER, THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD. SECTION 43 SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 [NOW SECTION 11] OF THE ACT, BUT RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO BRING THAT FACT TO THE ATTENTION OF THE BOARD SO THAT THE BOARD MAY CALL UPON THE UNION TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE. IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY.

5. IN THE INSTANT CASE, NO EXPLANATION WAS OFFERED BY THE RESPONDENT FOR ITS FAILURE TO COMMENCE NEGOTIATIONS. FOR THESE REASONS THE BOARD WOULD MAKE A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT.

6. FOLLOWING THE HEARING IN THIS MATTER, THE RESPONDENT SENT TO THE BOARD A DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT MADE BETWEEN IT AND THE EMPLOYER, COVERING EMPLOYEES IN THE BARGAINING UNIT. HAVING REGARD TO THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, IT WOULD BE IMPROPER FOR THE BOARD TO RECEIVE SUCH EVIDENCE, HAVING REGARD TO THE TIME AT WHICH IT WAS SUBMITTED. IN ANY EVENT, IT MAY BE NOTED THAT THE DOCUMENT IS DATED APRIL 27TH, 1967, WHICH WAS AFTER THE TERMINAL DATE SET FOR THE APPLICATION (APRIL 21ST, 1967) AND, OF COURSE, AFTER THE DATE OF THE MAKING OF THE APPLICATION. IN AN APPLICATION SUCH AS THIS, IT IS THE DATE OF THE MAKING OF THE APPLICATION WHICH IS THE MATERIAL DATE, ALTHOUGH IT MAY BE THAT IN A PROPER CASE THE BOARD WOULD CONSIDER EVIDENCE RELATING TO A LATER PERIOD IN CONSIDERING WHETHER OR NOT TO ORDER A REPRESENTATION VOTE. HAVING REGARD TO THE CIRCUMSTANCES OF THIS CASE, THE

BOARD WILL GIVE NO WEIGHT TO THE DOCUMENT FILED BY THE RESPONDENT.

7. THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE PERSONS IN THE BARGAINING UNIT FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

13019-67-R: GRAHAM SIMPSON (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (RESPONDENT).

- AND -

13020-67-R: ADELARD SEQUIN (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (RESPONDENT).

- AND -

13021-67-R: IVAN GILES (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: IVAN GILES FOR THE APPLICANTS, ERNEST HEDGES FOR THE RESPONDENT, AND F. G. HAMILTON AND R. J. BROWN FOR SIMPSON-SEARS LTD.

DECISION OF THE BOARD: MAY 9, 1967.

1. THE ABOVE APPLICATIONS ARE CONSOLIDATED.

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3. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT. THE RESPONDENT CONTENDS THAT THE APPLICATION IS UNTIMELY, HAVING REGARD TO THE PROVISIONS OF SECTION 43 (2) (c) OF THE LABOUR RELATIONS ACT. THAT PROVISION IS AS FOLLOWS:-

ANY OF THE EMPLOYEES IN THE BARGAINING UNIT  
DEFINED IN A COLLECTIVE AGREEMENT MAY, SUBJECT TO  
SECTION 46, APPLY TO THE BOARD FOR A DECLARATION  
THAT THE TRADE UNION NO LONGER REPRESENTS THE  
EMPLOYEES IN THE BARGAINING UNIT,

- - -

(c) IN THE CASE OF A COLLECTIVE AGREEMENT REFERRED  
TO IN CLAUSE A OR B THAT PROVIDES THAT IT WILL  
CONTINUE TO OPERATE FOR ANY FURTHER TERM OR  
SUCCESSIVE TERMS IF EITHER PARTY FAILS TO  
GIVE TO THE OTHER NOTICE OF TERMINATION OR OF  
ITS DESIRE TO BARGAIN WITH A VIEW TO THE  
RENEWAL, WITH OR WITHOUT MODIFICATIONS, OF THE  
AGREEMENT OR TO THE MAKING OF A NEW AGREEMENT,

ONLY DURING THE LAST TWO MONTHS OF EACH YEAR THAT IT SO CONTINUES TO OPERATE OR AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION, AS THE CASE MAY BE.

4. THE COLLECTIVE AGREEMENT WHICH WAS IN EFFECT BETWEEN THE RESPONDENT AND THE EMPLOYER, SIMPSONS-SEARS LTD, PROVIDED IN ITS DURATION CLAUSE AS FOLLOWS:-

THIS AGREEMENT SHALL CONTINUE IN EFFECT UNTIL JANUARY 31ST, 1967 AND SHALL CONTINUE AUTOMATICALLY THEREAFTER DURING ANNUAL PERIODS OF ONE (1) YEAR EACH, UNLESS EITHER PARTY NOTIFIES THE OTHER IN WRITING NOT LESS THAN THIRTY (30) DAYS AND NOT MORE THAN SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE THAT IT DESIRES TO AMEND OR TERMINATE THIS AGREEMENT.

IN THE EVENT OF SUCH NOTIFICATION BEING GIVEN AS TO AMENDMENT OF THE AGREEMENT, NEGOTIATIONS BETWEEN THE PARTIES SHALL BEGIN WITHIN TEN (10) DAYS FOLLOWING SUCH NOTIFICATION.

IF PURSUANT TO SUCH NEGOTIATIONS, AN AGREEMENT IS NOT REACHED ON THE RENEWAL OR AMENDMENT OF THIS AGREEMENT, PRIOR TO THE CURRENT EXPIRATION DATE, IT SHALL EXPIRE UNLESS IT IS EXTENDED FOR A SPECIFIC PERIOD BY MUTUAL AGREEMENT OF THE PARTIES.

THE AGGRIEVED FACT IS THAT THE RESPONDENT GAVE NOTICE TO THE EMPLOYER TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE AGREEMENT WITHIN THE PERIOD PROVIDED IN THE AGREEMENT FOR THE GIVING OF SUCH NOTICE. ACCORDINGLY, THE COLLECTIVE AGREEMENT EXPIRED BY ITS OWN TERMS ON JANUARY 31ST, 1967. THERE WAS NO NEW AGREEMENT SIGNED AND NO CONCILIATION SERVICES WERE REQUESTED OR GRANTED.

5. IT IS CLEAR THAT THERE IS NO COLLECTIVE AGREEMENT IN EFFECT AND THAT THIS APPLICATION IS TIMELY, AND THE BOARD SO FINDS.

6. HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF SIMPSONS-SEARS LTD. IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

7. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF SIMPSONS-SEARS LTD. THOSE ELIGIBLE TO VOTE ARE ALL STATIONARY ENGINEERS IN THE EMPLOY OF SIMPSONS-SEARS LTD. AT 2165 CARLING AVENUE, OTTAWA, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.



8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

13150-67-R: GERALD CYR (APPLICANT) v. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS OF AMERICA LOCAL UNION 527 FOR LABOURERS (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 24, 1967.

1. THIS IS AN APPLICATION MADE ON THE 17TH DAY OF MAY, 1967 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT WAS CERTIFIED ON NOVEMBER 29TH, 1966 AS THE BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF UNIFORM BUILDERS LIMITED IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. ON APRIL 14, 1967 A CONCILIATION OFFICER WAS APPOINTED TO MEET WITH THE RESPONDENT AND UNIFORM BUILDERS LIMITED. BY LETTER DATED MAY 17, 1967 THE MINISTER ADVISED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

3. AN APPLICATION UNDER SECTION 43(1) OF THE LABOUR RELATIONS ACT MAY NOT BE MADE UNTIL A YEAR HAS ELAPSED FROM THE DATE OF CERTIFICATION. CLEARLY THAT IS NOT THE CASE HERE. FURTHER, EVEN IF IT COULD BE SAID THAT THIS WAS AN APPLICATION UNDER SECTION 96(1) OF THE ACT (AND IT DOES NOT PURPORT TO BE ON ITS FACE), THE NECESSARY SIX MONTHS REQUIRED BY THAT SECTION HAVE NOT ELAPSED.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS ACCORDINGLY DISMISSED.

13151-67-R: VERNER PEDERSEN (APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA - LOCAL UNION 93 (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 24, 1967.

1. THIS IS AN APPLICATION MADE ON THE 17TH DAY OF MAY, 1967 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT WAS CERTIFIED ON NOVEMBER 29, 1966 AS THE BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF UNIFORM BUILDERS LIMITED IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. ON APRIL 4TH, 1967 A CONCILIATION OFFICER WAS APPOINTED TO MEET WITH THE RESPONDENT AND UNIFORM BUILDERS LIMITED. BY LETTER DATED MAY 2, 1967 THE MINISTER ADVISED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

3. AN APPLICATION UNDER SECTION 43(1) OF THE LABOUR RELATIONS ACT MAY NOT BE MADE UNTIL A YEAR HAS ELAPSED FROM THE DATE OF CERTIFICATION. CLEARLY THAT IS NOT THE CASE HERE. FURTHER, EVEN IF IT COULD BE SAID THAT THIS WAS AN APPLICATION UNDER SECTION 96(1) OF THE ACT (AND IT DOES NOT PURPORT TO BE ON ITS FACE), THE NECESSARY SIX MONTHS REQUIRED BY THAT SECTION HAVE NOT ELAPSED.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

13121-67-U: CANADIAN BECHTEL LIMITED (APPLICANT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 162 AND A. D. MARIANO (RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: W. GIBSON GRAY, Q.C., AND W. J. GIBSON FOR THE APPLICANT, ANTHONY MARIANO FOR THE RESPONDENTS.

DECISION OF THE BOARD: MAY 25, 1967.

1. THE NAME "CANADIAN BECHTEL COMPANY LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE APPLICANT IS AMENDED TO READ: "CANADIAN BECHTEL LIMITED".

2. THE NAMES "OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 162 AND A. D. MARIANO" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAMES OF THE RESPONDENTS ARE AMENDED TO READ: "OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 162 AND A. D. MARIANO".

3. THE APPLICATION WITH RESPECT TO A. D. MARIANO IS WITHDRAWN AT THE REQUEST OF THE APPLICANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD.

4. THE APPLICANT APPLIED ON MAY 16TH, 1967 FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT UNION IS UNLAWFUL. IT APPEARS THAT THE APPLICANT IS A CANADIAN SUBSIDIARY OF AN AMERICAN CORPORATION. IT FURTHER APPEARS THAT THE AMERICAN CORPORATION IS A PARTY TO AN AGREEMENT WITH THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA WHICH NATIONAL AGREEMENT PROVIDES THAT THE AMERICAN ASSOCIATION WILL RECOGNIZE AND BE BOUND BY THE PROVISIONS OF AGREEMENTS ENTERED INTO BY LOCAL UNIONS OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA. THE APPLICANT CONSIDERS ITSELF BOUND BY THE AGREEMENT SIGNED BY ITS PARENT.
5. PRIOR TO THE COMMENCEMENT OF THE PROJECT IN WHICH THE APPLICANT IS INVOLVED AT THE SHERMAN MINE PROJECT IN THE DISTRICT OF NIPISSING, THE APPLICANT CONTACTED MR. MARIANO AND A PRE-JOB CONFERENCE WAS HELD WITH MR. MARIANO AND INTERNATIONAL REPRESENTATIVES OF OTHER CRAFT TRADE UNIONS. THE APPLICANT AT THIS PRE-JOB CONFERENCE AGREED TO BE BOUND BY THE PROVISIONS OF THE LOCAL MASTER AGREEMENTS ENTERED INTO BETWEEN EMPLOYERS IN THE AREA AND THE CRAFT UNIONS. HOWEVER, THE APPLICANT REFUSED TO SIGN A COLLECTIVE AGREEMENT WITH ANY OF THE LOCAL CRAFT UNIONS.
6. IT WAS THE APPLICANT'S INTENTION TO GAIN AN ADVANTAGE BY REFUSING TO SIGN THE LOCAL AGREEMENTS BY REASON OF THE FACT THAT IT HOPED TO AVOID ANY STRIKE ACTION WHICH MIGHT BE INVOLVED IN THE RENEGOTIATION OF SUCH AGREEMENTS SINCE IT AGREED TO BE BOUND BY THE TERMS OF ANY NEW COLLECTIVE AGREEMENT WHICH MIGHT BE NEGOTIATED FROM TIME TO TIME WITH OTHER COMPANIES IN THE AREA.
7. IT WAS THE APPLICANT'S POSITION THAT IT WAS "BOUND" BY THE COLLECTIVE AGREEMENT WHICH WAS ENTERED INTO BETWEEN THE RESPONDENT UNION AND OTHER PLASTERING, CONCRETE OR GENERAL CONTRACTORS IN THE AREA. THE APPLICANT'S SOLICITOR ADVISED THE BOARD THAT HE HAD CAREFULLY DRAWN THE APPLICATION FOR THE DECLARATION SOUGHT AND, FOR REASONS BEST KNOWN TO THE APPLICANT, THE APPLICANT DELIBERATELY BASED ITS REQUEST FOR RELIEF ON THE PROVISIONS OF SECTION 54(1) OF THE LABOUR RELATIONS ACT.
8. SECTION 54(1) READS AS FOLLOWS:

WHERE A COLLECTIVE AGREEMENT IS IN OPERATION,  
NO EMPLOYEE BOUND BY THE AGREEMENT SHALL STRIKE  
AND NO EMPLOYER BOUND BY THE AGREEMENT SHALL  
LOCK OUT SUCH AN EMPLOYEE.
9. IT WAS THE APPLICANT'S POSITION THAT THERE WAS A COLLECTIVE AGREEMENT IN OPERATION WHICH AGREEMENT THE APPLICANT CONSIDERED ITSELF BOUND BY AND UNDER WHICH AGREEMENT THE RESPONDENT UNION PROCESSED GRIEVANCES.
10. SECTION 1(1)(c) OF THE ACT DEFINES COLLECTIVE AGREEMENT AS FOLLOWS:

"COLLECTIVE AGREEMENT" MEANS AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION, ON THE ONE HAND, AND A TRADE UNION THAT, OR A COUNCIL OF TRADE UNIONS THAT, REPRESENTS EMPLOYEES OF THE EMPLOYER OR EMPLOYEES OF MEMBERS OF THE EMPLOYERS' ORGANIZATION, ON THE OTHER HAND, CONTAINING PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE EMPLOYEES;

11. IN ORDER THAT AN AGREEMENT BE IN WRITING, THE BOARD HAS CONSISTENTLY SAID THAT THE AGREEMENT MUST BE EVIDENCED BY THE SIGNATURES OF THE PARTIES TO THE AGREEMENT. AS THE BOARD SAID IN THE CANADA MACHINERY CORPORATION LIMITED CASE 61 C.L.L.C. ¶16,194 @ PAGE 920:

IN THE RESULT, THEREFORE, WE ARE OF THE OPINION THAT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT MEANS AN AGREEMENT IN WRITING EXECUTED OR SIGNED BY THE PARTIES TO THE AGREEMENT. IN SO HOLDING, WE MUST NOT BE UNDERSTOOD AS DEPARTING FROM OUR PREVIOUS VIEWS THAT THERE IS NO NECESSITY FOR A COLLECTIVE AGREEMENT TO BE A FORMAL AGREEMENT OR THAT SUCH AN AGREEMENT MIGHT NOT, IN SOME CIRCUMSTANCES, BE FOUND IN AN EXCHANGE OF CORRESPONDENCE BETWEEN THE PARTIES (SEE FOUNDATION COMPANY OF CANADA CASE (1957) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,078, C.L.S. 76-555). 57 CLLC ¶18,078

IN THE FOUNDATION COMPANY OF CANADA CASE THE BOARD SAID:

THE MOST THAT CAN BE SAID FOR THE EVIDENCE BEFORE THE BOARD IS THAT IT INDICATES THAT WHILE THE RESPONDENT MAY HAVE IN FACT OBSERVED SOME OF THE TERMS OF THE VARIOUS AGREEMENTS IT WAS NOT LEGALLY BOUND TO DO SO. IN THE OPINION OF THE BOARD MERE OBSERVANCE OF AN AGREEMENT BY A PERSON NOT A PARTY TO IT IS NOT SUFFICIENT TO MAKE THAT PERSON BOUND BY IT.

12. THE BOARD IS UNABLE TO ACCEPT THE APPLICANT'S ARGUMENT THAT THERE IS A COLLECTIVE AGREEMENT IN OPERATION WITHIN THE MEANING OF SECTION 54(1), OF THE ACT. IT IS TRITE TO SAY THAT A COLLECTIVE AGREEMENT TO BE IN OPERATION MUST BE IN OPERATION BETWEEN THE PARTIES TO THE PROCEEDING. WHILE THE PARTIES TO THIS PROCEEDING HAVE RELIED UPON AND HAVE BEEN GOVERNED BY THE PROVISIONS OF AN AGREEMENT WHICH IS A COLLECTIVE AGREEMENT AS BETWEEN OTHER PARTIES, THE APPLICANT AND THE RESPONDENT ARE NOT SIGNATORIES TO THAT COLLECTIVE AGREEMENT AND THEREFORE ARE NOT "BOUND" BY THE COLLECTIVE AGREEMENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. SINCE THERE IS NO AGREEMENT IN WRITING, THERE CAN BE NO COLLECTIVE AGREEMENT IN OPERATION FOR THE PURPOSES OF SECTION 54(1) OF THE ACT.



13. IN ADDITION, IT IS INTERESTING TO NOTE THAT THE MASTER AGREEMENT FOR THE AREA ON WHICH THE APPLICANT RELIED AND WHICH NOT ONLY DOES NOT BEAR THE APPLICANT'S SIGNATURE BUT DOES NOT CONTAIN THE APPLICANT'S NAME IN THE STYLE OF THE AGREEMENT CONTAINS THE FOLLOWING ARTICLE:

ARTICLE 10 - TERRITORIAL JURISDICTION

THE TERRITORIAL JURISDICTION OF THIS AGREEMENT SHALL BE THE DISTRICTS OF COCHRANE AND TIMISKIMING IN THE PROVINCE OF ONTARIO.

AS STATED EARLIER, THE PROJECT ON WHICH THE APPLICANT'S EMPLOYEES ARE ENGAGED IN CONNECTION WITH THIS DISPUTE IS LOCATED IN THE DISTRICT OF NIPISSING WHICH WOULD NOT FALL WITHIN THE TERRITORIAL JURISDICTION OF THE AGREEMENT UPON WHICH THE APPLICANT RELIED.

14. AS STATED EARLIER, THE APPLICANT DELIBERATELY BASED ITS REQUEST FOR RELIEF SOLELY UPON THE PROVISIONS OF SECTION 54(1) OF THE ACT AND THE RESPONDENT CAME PREPARED TO MEET THE ALLEGATION THAT THERE WAS A COLLECTIVE AGREEMENT BINDING UPON THE PARTIES. IN VIEW OF THE BOARD'S FINDING SET OUT ABOVE AND THE NATURE OF THE APPLICANT'S REQUEST, THE BOARD IN THE EXERCISE OF ITS DISCRETION FINDS THAT THE APPLICANT IS NOT ENTITLED TO THE DECLARATION REQUESTED.

15. THE APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - PROSECUTION

12811-66-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. COOPER-WEEKS LIMITED AND JACK COOPER (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE:

APPEARANCES AT HEARING: L. A. MACLEAN, VINCENT GENTILE AND DOMENICO PAGNINI FOR THE APPLICANT, AND NORMAN L. MATHEWS, Q.C., JACK COOPER, WILLIAM WAIT AND A. J. CLARK FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 2, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR VIOLATION OF SECTIONS 48, 50 AND 51 OF THE LABOUR RELATIONS ACT. IN SUPPORT OF ITS ALLEGATIONS, THE APPLICANT LED EVIDENCE RELATING TO (1) CERTAIN PAMPHLETS ISSUED AND SPEECHES MADE BY THE RESPONDENT JACK COOPER, AN OFFICER OF COOPER-WEEKS LIMITED; (2) THE LAY-OFF OR DISMISSAL OF CERTAIN EMPLOYEES; AND (3) THE PAYMENT BY THE RESPONDENT JACK COOPER OF UNION DUES ON BEHALF OF CERTAIN EMPLOYEES. WE SHALL DEAL WITH THESE MATTERS IN TURN. THE APPLICANT UNION, IT SHOULD BE NOTED, IS BARGAINING AGENT FOR EMPLOYEES OF COOPER-WEEKS LIMITED AT ITS ORFUS ROAD AND ALLIANCE AVENUE PLANTS IN METROPOLITAN TORONTO. AN ORGAN-

IZING CAMPAIGN HAS RECENTLY BEEN CONDUCTED AT THE COMPANY'S LAUGHTON AVENUE PLANT, ALSO IN METROPOLITAN TORONTO.

2. THE RESPONDENT COMPANY, OVER THE SIGNATURE OF JACK COOPER, HAS ISSUED A NUMBER OF PAMPHLETS TO ITS EMPLOYEES AT THE LAUGHTON AVENUE PLANT, CONTAINING STATEMENTS CRITICAL OF THE APPLICANT UNION, BOTH AS TO ITS EFFECTIVENESS IN REPRESENTING THE EMPLOYEES AT THE OTHER PLANTS, AND AS TO STATEMENTS MADE BY THE UNION'S BUSINESS AGENT, MR. MAX FEDERMAN. THE PAMPHLETS, TO A LARGE DEGREE, EMBODIED REMARKS MADE BY MR. COOPER IN SPEECHES ADDRESSED TO AUDIENCES OF EMPLOYEES ASSEMBLED AT HIS DIRECTION DURING WORKING HOURS. THESE STATEMENTS MADE BY THE COMPANY WERE BY WAY OF REPLIES TO STATEMENTS MADE BY MR. FEDERMAN IN A SERIES OF PAMPHLETS ISSUED BY HIM TO THE EMPLOYEES OF THE RESPONDENT COMPANY.

3. SECTION 48 OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:-

NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

IT IS THE APPLICANT'S CONTENTION THAT THE STATEMENTS REFERRED TO CONSTITUTE UNDUE INFLUENCE AND INTERFERE WITH THE SELECTION OF A TRADE UNION BY EMPLOYEES. IN OUR OPINION, THIS CONTENTION FAILS. IT IS NOT NECESSARY FOR US TO SET OUT AN ANALYSIS OF THESE STATEMENTS; IT IS SUFFICIENT TO STATE THAT THEY CANNOT BE READ AS SEEKING TO INFLUENCE EMPLOYEES EXCEPT BY THE EXPRESSION OF THE EMPLOYER'S OPINION. IN ASSESSING THE EMPLOYER'S STATEMENTS, REGARD MUST BE HAD TO THE CONTEXT IN WHICH THEY WERE MADE, AND IN PARTICULAR TO THE BACKGROUND OF STATEMENTS MADE BY THE UNION. THIS IS NOT TO SAY, OF COURSE, THAT AN EMPLOYER COULD PROPERLY REPLY TO THREATS BY MAKING OTHER THREATS IN RETURN. ON THE EVIDENCE, HOWEVER, THIS IS NOT SUCH A CASE.

4. IT WAS FURTHER ALLEGED BY THE APPLICANT THAT CERTAIN EMPLOYEES HAD BEEN LAID OFF OR DISMISSED BY THE RESPONDENT COMPANY AND NOT RECALLED, AND THAT THE DISMISSAL OR FAILURE TO RECALL SUCH EMPLOYEES WAS RELATED TO THEIR UNION ACTIVITY AND CONTRARY TO THE LABOUR RELATIONS ACT. HAVING REGARD TO THE EVIDENCE RELATING TO EACH OF THESE CASES, WE CANNOT CONCLUDE THAT THESE EMPLOYEES WERE DISCRIMINATED AGAINST OR THAT THERE WAS ANY VIOLATION OF THE LABOUR RELATIONS ACT BY THE RESPONDENTS WITH RESPECT TO THEM.

5. IT WAS FURTHER ALLEGED THAT THE RESPONDENT JACK COOPER HAD, IN VIOLATION OF THE LABOUR RELATIONS ACT, ENTERED INTO CERTAIN ARRANGEMENTS WITH EMPLOYEES RELATING TO THE DEDUCTION OF UNION DUES FROM THEIR WAGES PURSUANT TO THE PROVISION OF A COLLECTIVE AGREEMENT BINDING UPON THEM. WE CANNOT ACCEDE TO THE APPLICANT'S CONTENTION THAT MR. COOPER ENTERED INTO A COLLECTIVE AGREEMENT WITH THE EMPLOYEES CONCERNED, NOR EVEN THAT HE "BARGAINED" WITH THEM CONTRARY TO SECTION 51 OF THE ACT. THERE IS EVIDENCE, HOWEVER, THAT MR. COOPER DIRECTED THE CESSATION OF DEDUCTION OF UNION DUES FROM A NUMBER OF EMPLOYEES' WAGES; THAT HE DIRECTED THE DEDUCTION OF A CORRESPONDING AMOUNT FROM HIS OWN SALARY AND ITS TRANS-MITTAL TO THE UNION IN LIEU OF DUES FOR THE EMPLOYEES IN QUESTION; AND THAT HE ADVISED THE EMPLOYEES GENERALLY OF WHAT HE HAD DONE IN THE COURSE OF ONE OF HIS SPEECHES AND IN A PAMPHLET ISSUED BY HIM. IN THE CIRCUMSTANCES, IT IS OUR VIEW THAT AN ARGUABLE QUESTION ARISES WHETHER OR NOT THIS CONDUCT CONSTITUTES A VIOLATION OF SECTION 48 OF THE ACT.

6. IN SO FAR AS IT AFFECTS THE RESPONDENT COOPER-WEEKS LIMITED, THE APPLICATION IS DISMISSED. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT JACK COOPER FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (1) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 48 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT DECEMBER 20TH, 1966, HE DID INTERFERE WITH THE SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION;
- (2) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 50(c) OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT DECEMBER 20TH, 1966, HE DID SEEK TO COMPEL EMPLOYEES OF COOPER-WEEKS LIMITED, TO CEASE TO BE MEMBERS OF A TRADE UNION.

INDEXED ENDORSEMENTS - SECTION 65

12643-66-U: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (COMPLAINANT)  
V. W. T. HAWKINS LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: M. LEVINSON, J. SACK, D. CRAWFORD AND G. DAINARD  
FOR THE COMPLAINANT, G. A. DELINE AND R. W. CASS FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFFE: MAY 4, 1967.

1. THIS IS A COMPLAINT FOR RELIEF MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS, JOHN BOURETTE, BERTHA ST. PIERRE, THERESA GOLDEN, DIANNE BROOKS, JEAN KELLAR, CHERYL DEAN, LINDA BAKER, SHARON THORN AND VIRGINIA THORN, WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE ACT. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT DURING A PERIOD COMMENCING ON JANUARY 13TH, 1967 TO AND INCLUDING JANUARY 16TH, 1967, THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT BECAUSE OF THEIR MEMBERSHIP IN AND SUPPORT OF THE COMPLAINANT TRADE UNION. THE RESPONDENT DENIES THE COMPLAINT MADE BY THE COMPLAINANT.

3. THE RESPONDENT IS ENGAGED IN THE PRODUCTION AND PACKAGING OF POTATO CHIPS AND OTHER SNACK PRODUCTS. WHILE THE NUMBER OF PERSONS EMPLOYED BY THE RESPONDENT IN ITS PLANT AT BELLEVILLE FLUCTUATES DURING THE COURSE OF THE YEAR DEPENDING ON CONSUMER DEMAND, THE EVIDENCE IS THAT THE AVERAGE NUMBER OF PERSONS EMPLOYED IS APPROXIMATELY 35, MOST OF WHOM ARE FEMALE EMPLOYEES. SOME ARE EMPLOYED IN THE KITCHEN AREA OF THE RESPONDENT'S PLANT WHERE THE POTATO CHIPS AND OTHER SNACK FOODS ARE PREPARED. OTHERS ARE EMPLOYED IN THE SHIPPING DEPARTMENT UNLOADING THE SUPPLIES AND FOODSTUFFS REQUIRED IN THE RESPONDENT'S OPERATIONS AND LOADING BOXES OF THE RESPONDENT'S PRODUCTS ON ITS TRUCKS FOR DISTRIBUTION. THE GREAT MAJORITY OF THE RESPONDENT'S EMPLOYEES, HOWEVER, ARE EMPLOYED IN THE PACKAGING PROCESS. THAT IS, THESE EMPLOYEES PRINT THE VARIOUS SIZED BAGS USED BY THE RESPONDENT, FILL THE BAGS WITH CHIPS AND OTHER PRODUCTS, SEAL THE BAGS, AND PACK THEM INTO BOXES FOR DISTRIBUTION.

4. THE RESPONDENT HAS A NUMBER OF MACHINES THAT ARE OPERATED BY THE EMPLOYEES IN THE PACKAGING PROCESS. THE SOLE FUNCTION OF ONE EMPLOYEE (ALTHOUGH NOT NECESSARILY THE SAME EMPLOYEE) IS TO SEPARATE ANY BELOW STANDARD CHIPS OR OTHER PRODUCT PRIOR TO THEIR BEING PLACED IN BAGS. THE EMPLOYEES WHO PACK THE BAGS INTO BOXES, HOWEVER, ALSO ARE SUPPOSED TO REJECT ANY BAGS WHICH ARE UNDERWEIGHT OR OVERWEIGHT IN CONTENT OR WHICH HAVE SOME DEFECT IN THE PACKAGING. THE NUMBER OF OUNCES OF CHIPS OR OTHER PRODUCT DEPOSITED IN EACH BAG IS DETERMINED BY REGULATING THE MACHINES.

5. THE EVIDENCE OF SHIRLEY WOODCOX, WHOSE PRINCIPAL DUTIES WITH THE RESPONDENT ARE THOSE OF PERSONNEL AND PLANT MANAGER, AND OF JAMES MARKER, THE VICE-PRESIDENT AND GENERAL MANAGER OF THE RESPONDENT, IS THAT BOTH BEFORE BUT PARTICULARLY DURING 1966 THERE WERE AN INCREASING NUMBER OF COMPLAINTS FROM CUSTOMERS ABOUT THE RESPONDENT'S PRODUCTS. THE GENERAL NATURE OF THE COMPLAINTS WAS THAT (1) BAGS OF POTATO CHIPS WERE UNDERWEIGHT IN CONTENT, (2) THE BAGS WERE NOT CORRECTLY OR EVENLY SEALED, AND (3) IMPROPERLY PROCESSED POTATOES OR UNDESIRABLE FOREIGN MATTER WAS FOUND IN THE PACKAGES OF CHIPS. ACCORDING TO THEIR TESTIMONY, AS A RESULT OF THESE SHORTCOMINGS A GROWING NUMBER OF BOXES AND BAGS OF DEFECTIVE MERCHANDISE WAS BEING RETURNED TO THE PLANT. CONFIRMATORY EVIDENCE REGARDING THE RETURN OF THE RESPONDENT'S MERCHANDISE WAS GIVEN BY ROBERT SPECK, THE SUPERVISOR OF THE SHIPPING DEPARTMENT. GERARD LALONDE, A DISTRIBUTOR FOR THE RESPONDENT IN THE OTTAWA AREA, AND THOMAS WILLARD,



THE RESPONDENT'S SALES MANAGER, GAVE SUPPORTING TESTIMONY ABOUT THE INCREASED DEFICIENCIES IN THE RESPONDENT'S PRODUCTS, THE LATTER TESTIFYING THAT IT HAD RESULTED IN THE LOSS OF DISTRIBUTORS.

6. MRS. WOODCOX TESTIFIED THAT ON NOVEMBER 18TH, 1966, SHE HAD GONE INTO THE PACKAGING SECTION OF THE PLANT AND NOTED THAT THE FLOOR WAS LITTERED WITH PRODUCE, EMPTY BAGS AND GARBAGE. HER EVIDENCE IS THAT WHILE SHE WAS THERE MARKER ALSO CAME INTO THE PLANT AND UPON OBSERVING THE DEBRIS ON THE FLOOR TOLD HER TO GET THE PLACE CLEANED UP AND GET RID OF ANYONE WHO IS OR EVEN LOOKS INEFFICIENT. MARKER TESTIFIED THAT UPON VIEWING ALL THE WASTE ON THE FLOOR HE TOLD MRS. WOODCOX THAT IT HAD TO STOP AND THE PLACE HAD TO BE CLEANED UP. HIS EVIDENCE IS THAT HE FURTHER STATED THAT HE DID NOT CARE HOW IT WAS ACCOMPLISHED BUT THAT HE WANTED EFFICIENCY.

7. MRS. WOODCOX'S TESTIMONY IS THAT SHE PLANNED TO TAKE IMMEDIATE STEPS TO DISCHARGE THOSE EMPLOYEES WHOM SHE BELIEVED TO BE RESPONSIBLE FOR THE SITUATION, BUT THAT ON THE FOLLOWING DAY HER HUSBAND BECAME SERIOUSLY ILL. HER EVIDENCE IS THAT FROM NOVEMBER 19TH, 1966 UNTIL AFTER THE NEW YEAR MOST OF HER TIME WAS TAKEN UP WITH HER DOMESTIC RESPONSIBILITIES. ACCORDING TO HER TESTIMONY, DURING THIS PERIOD SHE WAS ONLY ABLE TO ATTEND AT THE PLANT FOR BRIEF PERIODS ONCE OR TWICE A DAY. THE EVIDENCE OF MARKER WOULD INDICATE THAT SHE SPENT LONGER PERIODS OF TIME AT THE PLANT DURING THIS PERIOD BUT THAT SHE WAS UNDER CONSIDERABLE STRAIN BECAUSE OF HER HUSBAND'S CONDITION. THE EVIDENCE IS THAT FROM JANUARY 4TH TO JANUARY 11TH, 1967 MRS. WOODCOX WAS ON A WEEK'S VACATION WITH HER HUSBAND, RETURNING TO THE PLANT ON THE MORNING OF THURSDAY, JANUARY 12TH, 1967.

8. MRS. WOODCOX TESTIFIED THAT BECAUSE OF HER FREQUENT ABSENCE FROM THE PLANT DURING THE PERIOD FROM NOVEMBER 19TH, 1966 TO JANUARY 11TH, 1967, SHE HAD BEEN UNABLE TO TAKE THE REMEDIAL ACTION THAT SHE CONTEMPLATED ON NOVEMBER 18TH. SHE STATED THAT DURING HER WEEK'S VACATION IN EARLY JANUARY, HOWEVER, SHE MADE A MENTAL NOTE OF THOSE EMPLOYEES WHOM SHE PLANNED TO DISCHARGE UPON HER RETURN. HER EVIDENCE IS THAT ON THURSDAY MORNING, JANUARY 12TH, UPON ARRIVING AT THE PLANT SHE IMMEDIATELY PROCEEDED TO MAKE A LIST OF THOSE EMPLOYEES WHO WERE GOING TO BE DISCHARGED. SHE CONSULTED THE FORELADY MRS. FORBERT ON THIS MATTER AND GAVE INSTRUCTIONS TO HER TO LAY OFF THE PERSONS WHOM SHE LISTED. WHILE MRS. WOODCOX'S EVIDENCE IS THAT SHE MADE HER LIST FIRST THING ON THE MORNING OF JANUARY 12TH, IT IS NOT CLEAR FROM THE EVIDENCE WHEN SHE GAVE INSTRUCTIONS FOR THE LAY-OFF TO MRS. FORBERT. MRS. FORBERT WAS NOT CALLED AS A WITNESS. MRS. WOODCOX ADMITTED IN HER TESTIMONY THAT WHILE SHE INSTRUCTED MRS. FORBERT TO INFORM THE EMPLOYEES CONCERNED THAT THEY WERE BEING LAID OFF, SHE (MRS. WOODCOX) WAS IN FACT DISCHARGING THEM AS SHE HAD NO INTENTION OF RECALLING ANY OF THEM. HER EVIDENCE IS THAT IT WAS THE POLICY OF THE RESPONDENT TO LAY OFF EMPLOYEES EVEN WHEN IT WAS INTENDED TO BE A PERMANENT DISCHARGE. THIS METHOD OF TERMINATING EMPLOYMENT WAS DONE, SHE SAID, SO AS "TO LET THE EMPLOYEES DOWN MORE EASILY".

9. THE EVIDENCE OF DOUGLAS CRAWFORD, A UNION ORGANIZER FOR THE COMPLAINANT TRADE UNION, IS THAT HE COMMENCED HIS ORGANIZING CAMPAIGN AMONG THE EMPLOYEES OF THE RESPONDENT ON DECEMBER 12TH, 1966. HE STATED THAT HE PROCEEDED TO APPROACH EMPLOYEES AT THEIR HOMES AND SIGN THEM INTO MEMBERSHIP IN THE UNION. HE TESTIFIED THAT ON THE EVENING JANUARY 4TH, 1967 HE WENT TO THE HOME OF AN EMPLOYEE, ROGER HAYES, AND SOLICITED HIS SUPPORT FOR THE UNION. HAYES TOLD CRAWFORD THAT HE WANTED FIRST TO CONSULT WITH OTHER EMPLOYEES AT THE PLANT. CRAWFORD THEREUPON LEFT WITH HAYES HIS CALLING CARD, WHICH IDENTIFIED HIM AS A "LOCAL ORGANIZER" OF THE COMPLAINANT UNION. CRAWFORD'S EVIDENCE IS THAT HE MET AGAIN WITH HAYES LATE THE FOLLOWING AFTERNOON IN FRONT OF HAYES' HOME. ON THAT OCCASION HAYES INFORMED CRAWFORD THAT HE (HAYES) HAD GIVEN CRAWFORD'S CALLING CARD TO A FOREMAN RALPH PLANE WHO IN TURN HAD SHOWN IT TO MARKER. MARKER TESTIFIED THAT PLANE HAD SHOWN HIM A UNION ORGANIZER'S CARD WHICH WAS IDENTIFIED AS HAVING BEEN GIVEN TO ROGER HAYES.

10. MRS. WOODCOX TESTIFIED THAT NEAR NOON ON THE MORNING OF JANUARY 12TH, 1967, MARKER HAD COME TO HER AND SAID, "I HEAR ROGER HAYES HAS A UNION CARD," TO WHICH, ACCORDING TO HER EVIDENCE SHE REPLIED, "SO WHAT." MRS. WOODCOX'S TESTIMONY IS THAT THIS WAS THE FULL EXTENT OF THEIR CONVERSATION ON THAT SUBJECT. MARKER TESTIFIED, HOWEVER, THAT WHEN HE MENTIONED TO MRS. WOODCOX THAT PLANE HAD SHOWN HIM A UNION CARD, MRS. WOODCOX ASKED HIM A NUMBER OF QUESTIONS ABOUT IT.

11. THE EVIDENCE IS THAT 20 EMPLOYEES, OUT OF A WORK FORCE OF 36, THAT IS MORE THAN HALF OF THE EMPLOYEES, WERE LAID OFF, OR AS MRS. WOODCOX ADMITTED, WERE IN FACT DISCHARGED, BETWEEN JANUARY 13TH AND JANUARY 18TH, 1967. THE GREAT MAJORITY OF THEM WERE INFORMED OF THEIR "LAY-OFF" WHICH WAS EFFECTIVE IMMEDIATELY, ON SUNDAY, JANUARY 15TH. ONE OF THE AGGRIEVED PERSONS JOHN BOURETTE, WAS TOLD BY MRS. WOODCOX ON THE MORNING OF JANUARY 13TH THAT HE WAS DISCHARGED BECAUSE OF HIS HABITUAL LATENESS WHICH INCLUDED THAT MORNING. MARKER TESTIFIED THAT IN HIS PRESENCE ANOTHER MALE EMPLOYEE (BUT NOT ONE OF THE AGGRIEVED PERSONS) WAS DISCHARGED LATER THE SAME DAY BY MRS. WOODCOX AND WAS INFORMED BY HER THAT HE WAS BEING DISCHARGED BECAUSE OF HIS RESPONSIBILITY FOR SOME DEFECTIVE MERCHANDISE THAT HAD BEEN RETURNED TO THE PLANT.

12. THE AGGRIEVED PERSONS JEAN KELLAR, DIANNE BROOKS, THERESA GOLDEN, BERTHA ST. PIERRE, VIRGINIA THORN AND CHERYL DEAN WERE ALL INFORMED BY MRS. FORBERT BY TELEPHONE ON SUNDAY, JANUARY 15TH THAT THEY WERE BEING LAID OFF FOR A COUPLE OF DAYS. THE SAME INFORMATION WAS CONVEYED BY MRS. FORBERT TO LINDA BAKER ON JANUARY 13TH AND TO SHARON THORN ON JANUARY 18TH. (MRS. WOODCOX TESTIFIED THAT SHARON THORN WAS KEPT ON FOR THREE EXTRA DAYS TO WORK ON A SPECIAL ORDER). NO REASON FOR THE LAY-OFF WAS GIVEN BY MRS. FORBERT. THE EVIDENCE IS THAT THE AGGRIEVED PERSONS RETURNED TO THE PLANT DURING THE PERIOD FROM JANUARY 17TH TO 19TH AT WHICH TIME MRS. WOODCOX GAVE THEM THEIR PAY CHEQUE FOR THE PREVIOUS WEEK, ANY VACATION PAY OWING TO THEM AND THEIR UNEMPLOYMENT INSURANCE BOOK. MRS. WOODCOX VOLUNTEERED NO REASON FOR THEIR "LAY-OFF".

13. THERE WERE FILED AS EXHIBITS TWO ADVERTISEMENTS THAT APPEARED IN THE LOCAL BELLEVILLE NEWSPAPER DATED JANUARY 18TH, 1967 AND JANUARY 26TH, 1967, THE FORMER ADVERTISING FOR FEMALES FOR LIGHT FACTORY WORK AND THE LATTER ADVERTISING FOR MALES FOR LIGHT FACTORY WORK. MRS. WOODCOX TESTIFIED THAT SHE PLACED THE ADVERTISEMENT IN THE NEWSPAPER FOR THE RESPONDENT COMPANY. HER EVIDENCE IS THAT A COUPLE OF GIRLS WERE HIRED BY THE RESPONDENT DURING THE WEEK COMMENCING JANUARY 16TH WHO HAPPENED TO APPLY AT THE PLANT. SHE FURTHER TESTIFIED THAT TEN NEW EMPLOYEES WERE HIRED IN THE FOLLOWING WEEK AND THAT ADDITIONAL EMPLOYEES WERE HIRED THEREAFTER, BRINGING THE WORK FORCE UP TO ITS USUAL NUMBER BY THE END OF JANUARY.

14. MRS. WOODCOX TESTIFIED THAT DESPITE THE LARGE TURN OVER IN STAFF, PRODUCTION WAS MAINTAINED AND ALL ORDER DEADLINES WERE MET. SHE FURTHER STATED THAT PRODUCTION QUALITY HAD IMPROVED AND THAT SHE WAS NOT AWARE OF ANY COMPLAINTS CONCERNING THE RESPONDENT'S PRODUCTS SINCE THE NEW EMPLOYEES WERE HIRED. SHE TESTIFIED, HOWEVER, THAT ONLY FOUR OF THOSE PERSONS HIRED IN JANUARY WERE STILL IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE HEARING. LALONDE ALSO TESTIFIED THAT HE HAD RECEIVED NO COMPLAINTS ABOUT THE RESPONDENT'S MERCHANDISE SINCE JANUARY. THE EVIDENCE OF MARKER IS THAT WHILE THERE HAVE BEEN COMPLAINTS, THEY WERE NOT NEARLY AS MANY AS IN 1966. WILLARD, THE SALES MANAGER, AS WELL TESTIFIED THAT THERE WERE FEWER COMPLAINTS IN 1967.

15. THE EVIDENCE OF PAULINE DEGENOVA, ONE OF THE EMPLOYEES OF THE RESPONDENT WHO WAS NOT DISCHARGED AND WHO IS STILL IN THE EMPLOY OF THE RESPONDENT, IS THAT ON ABOUT THURSDAY OF THE WEEK COMMENCING JANUARY 16TH, 1967 TEN EMPLOYEES WERE HIRED. SHE TESTIFIED THAT ADDITIONAL EMPLOYEES WERE HIRED THEREAFTER DURING JANUARY BRINGING THE WORK FORCE UP TO ITS USUAL COMPLEMENT. HER EVIDENCE IS THAT THE EXPERIENCED EMPLOYEES HAD TO TRAIN THE NEW EMPLOYEES ON THE JOB AND THAT PRODUCTION NECESSARILY DROPPED DURING THE TRAINING PERIOD. SHE ALSO TESTIFIED THAT THOSE OF THE DISCHARGED EMPLOYEES WHO HAD HAD A NUMBER OF YEARS OF EXPERIENCE PERFORMED BETTER IN THEIR JOBS THAN THE NEW EMPLOYEES WHO REPLACED THEM.

16. THE EVIDENCE IS THAT SHARON THORN HAD BEEN EMPLOYED BY THE RESPONDENT FOR NEARLY FIVE YEARS. CHERYLE DEAN HAD BEEN EMPLOYED BY THE RESPONDENT FOR FOUR YEARS ALTHOUGH SHE HAD NOT WORKED DURING THE PREVIOUS TWO SUMMERS. DIANNE BROOKS HAD WORKED FOR THE RESPONDENT FOR THREE YEARS AND THERESA GOLDEN AND JEAN KELLAR FOR A YEAR AND A HALF. BERTHA ST. PIERRE HAD BEEN EMPLOYED FOR FIVE MONTHS PRIOR TO HER LAY-OFF ALTHOUGH SHE HAD WORKED FOR THE RESPONDENT FOR THE BETTER PART OF A YEAR IN 1964. VIRGINIA THORN HAD BEEN HIRED BY THE RESPONDENT IN JUNE OF 1966 BUT WAS LAID OFF IN SEPTEMBER OF 1966. SHE WAS REHIRED BY THE RESPONDENT AGAIN ON DECEMBER 4TH, 1966. IT APPEARS FROM THE EVIDENCE THAT LINDA BAKER HAD WORKED FOR THE RESPONDENT FOR SHORT PERIODS AND HAD BEEN WORKING FOR THE RESPONDENT SINCE SOME TIME IN DECEMBER 1966 PRIOR TO HER DISCHARGE. MRS. WOODCOX TESTIFIED THAT LINDA BAKER HAD BEEN HIRED FOR A TEMPORARY PERIOD OVER CHRISTMAS AND THAT SHE WAS SO INFORMED. LINDA BAKER'S EVIDENCE IS THAT SHE WAS NOT TOLD THAT SHE WAS BEING EMPLOYED ON A TEMPORARY BASIS AT THE TIME SHE WAS HIRED. THE EVIDENCE OF PAULINE DEGENOVA INDICATES THAT OTHER EMPLOYEES OF A NUMBER OF YEARS' STANDING WERE ALSO AMONG THE EMPLOYEES DISCHARGED IN JANUARY OF 1967.

17. JEAN KELLAR, THERESA GOLDEN AND SHARON THORN ALL OPERATED MACHINES USED IN THE PACKAGING OF THE RESPONDENT'S PRODUCT. CHERYL DEAN HAD BEEN LEARNING TO OPERATE ONE OF THE MACHINES IN THE COUPLE OF WEEKS PRIOR TO HER DISCHARGE. BERTHA ST. PIERRE AND VIRGINIA THORN WERE PACKERS, AND IT APPEARS THAT LINDA BAKER PRIMARILY FOLDED BAGS. DIANNE BROOKS WAS EMPLOYED IN THE SHIPPING DEPARTMENT, LOADING AND UNLOADING TRUCKS. IN HER EXAMINATION-IN-CHIEF MRS. WOODCOX TESTIFIED THAT ALL OF THE EMPLOYEES WHO WERE "LAID OFF" IN JANUARY OF 1967 WERE EMPLOYED IN PACKAGING WITH THE EXCEPTION OF DIANNE BROOKS AND JOHN BOURETTE. FROM HER CROSS-EXAMINATION, HOWEVER, IT WOULD APPEAR THAT AT LEAST TWO OTHER PERSONS WHO WERE EMPLOYED AS LABOURERS WERE DISCHARGED AT THE SAME TIME.

18. THE AGGRIEVED PERSONS WHO OPERATED MACHINES MADE ESTIMATES OF FROM ONE WEEK TO TWO MONTHS AS BEING THE PERIOD REQUIRED TO LEARN TO PERFORM ON THE MACHINES EFFICIENTLY, DEPENDING ON THE TYPE OF MACHINE. PAULINE DEGENOVA'S EVIDENCE IS THAT IT TAKES UP TO A MONTH TO "KNOW WHAT YOUR DOING" ON THE BAG MACHINE. ROBERT SPECK, THE HEAD OF THE SHIPPING DEPARTMENT, WHO HAS BEEN EMPLOYED BY THE RESPONDENT FOR TEN YEARS ESTIMATED THAT A PERIOD OF TWO WEEKS WAS REQUIRED TO LEARN TO OPERATE THE MACHINES. MRS. WOODCOX, HOWEVER, STATED IN HER EVIDENCE THAT MINIMAL QUALIFICATIONS WERE NEEDED FOR ANY JOB IN THE PLANT AND THAT IT ONLY TOOK "FIVE MINUTES" TO LEARN THE JOBS.

19. WITH THE EXCEPTION OF LINDA BAKER AND JOHN BOURETTE, ALL OF THE AGGRIEVED PERSONS TESTIFIED THAT THEY HAD NEVER BEEN CRITICIZED BY ANY MEMBER OF MANAGEMENT WITH REGARD TO THE PERFORMANCE OF THEIR WORK. LINDA BAKER TESTIFIED THAT ON ONE OCCASION SHE HAD BEEN REPRIMANDED BY MRS. WOODCOX. CHERYL DEAN'S EVIDENCE IS THAT ON OCCASION SHE HEARD MEMBERS OF MANAGEMENT SHOUTING AT EMPLOYEES TO "SPEED IT UP". SHE WAS ALSO THE ONLY ONE OF THE AGGRIEVED PERSONS WHO HAD ANY AWARENESS OF COMPLAINTS ABOUT THE RESPONDENT'S PRODUCTS. CHERYL DEAN TESTIFIED THAT ON ONE OCCASION, THE TIME OF WHICH SHE COULD NOT IDENTIFY, SHE HEARD THAT THERE HAD BEEN A COMPLAINT THAT THE BAGS WERE UNDERWEIGHT IN CONTENT. MRS. WOODCOX'S EVIDENCE IS THAT THESE EMPLOYEES WERE INFORMED OF THEIR DEFICIENCIES IN THE PERFORMANCE OF THEIR JOBS. WHEN QUESTIONED ON THIS STATEMENT IN CROSS-EXAMINATION, HOWEVER, HER ANSWER WAS THAT ON THREE OCCASIONS WHEN SHE WAS AT THE PLANT BETWEEN NOVEMBER 19TH, 1966 AND JANUARY 4TH, 1967 SHE HAD COMPLAINED TO THE GIRLS ABOUT THE NOISE THEY WERE MAKING. MARKER'S EVIDENCE IS THAT ON MANY OCCASIONS HE CRITICIZED THE PLANT MANAGERIAL STAFF ABOUT THE STANDARD OF PRODUCTION BUT THAT HE HAD NOT REPRIMANDED ANY OF THE EMPLOYEES HIMSELF.

20. THE AGGRIEVED PERSONS TESTIFIED THAT AT THE TIME OF THEIR "LAY-OFF" THEY WERE ALL BUSY. SHARON THORN'S EVIDENCE WAS THAT SHE WAS NOT PARTICULARLY BUSY, HOWEVER, AT THE SAME TIME SHE STATED THAT SHE WAS WORKING AT HER MACHINE JUST ABOUT ALL OF THE TIME. DIANNE BROOKS TESTIFIED THAT DURING THE PAST WINTER THE PLANT HAD BEEN BUSIER THAN USUAL. PAULINE DEGENOVA'S TESTIMONY IS THAT JANUARY THIS YEAR WAS THE BUSIEST IT HAD BEEN FOR THAT TIME OF YEAR SINCE SHE HAD BEEN EMPLOYED BY THE RESPONDENT. SHE WAS HIRED THREE YEARS AGO. PAULINE DEGENOVA'S EVIDENCE IS THAT THE FORELADY MRS. FORBERT HAD COMMENTED TO HER THAT THIS YEAR WAS THE BUSIEST YEAR.



21. JEAN KELLAR, DIANNE BROOKS, SHARON THORN AND CHERYL DEAN ALL TESTIFIED THAT IN PREVIOUS YEARS THEY HAD BEEN LAID OFF WHEN WORK WAS "SLACK" BUT ONLY FOR A COUPLE OF DAYS AT A TIME. PAULINE DEGENOVA'S EVIDENCE IS THAT IN THE PAST EMPLOYEES HAD BEEN LAID OFF FOR A COUPLE OF MONTHS IN THE PERIOD AFTER CHRISTMAS. SHE TESTIFIED, HOWEVER, THAT IT WAS UNUSUAL FOR GIRLS WITH YEARS OF EXPERIENCE TO BE LAID OFF FOR MORE THAN A COUPLE OF DAYS. SHE STATED THAT ON OCCASION EMPLOYEES ONLY WORKED TWO OR THREE DAYS A WEEK DURING "SLACK" PERIODS. MRS. WOODCOX'S EVIDENCE IS THAT IN PAST YEARS WHEN THERE WAS NOT SUFFICIENT WORK TO KEEP EMPLOYEES BUSY, THERE HAD BEEN SIZEABLE LAY OFFS OF FIFTEEN OR TWENTY EMPLOYEES. SHE TESTIFIED THAT THE RESPONDENT WOULD NOT RECALL THOSE EMPLOYEES WHOSE WORK HAD NOT BEEN SATISFACTORY.

22. COUNSEL FOR THE RESPONDENT ADDUCED EVIDENCE FROM MRS. WOODCOX CONCERNING THE ABSENTEE AND LATENESS RECORD OF A NUMBER OF AGGRIEVED PERSONS. IN HER TESTIMONY, HOWEVER, MRS. WOODCOX UNEQUIVOCALLY STATED THAT ALL OF THE AGGRIEVED PERSONS, WITH THE EXCEPTION OF JOHN BOURETTE AND DIANNE BROOKS WERE DISCHARGED BECAUSE OF THEIR INEFFICIENCY IN THE PERFORMANCE OF THEIR JOBS IN PACKAGING THE RESPONDENT'S PRODUCTS. HER EVIDENCE IS THAT THEIR RECORD OF ABSENTEEISM AND LATENESS WAS NOT A CONSIDERATION WHICH SHE TOOK INTO ACCOUNT IN HER DECISION TO DISCHARGE THEM.

23. DEALING WITH THE INDIVIDUAL AGGRIEVED PERSONS MRS. WOODCOX TESTIFIED THAT JEAN KELLAR WHO OPERATED A BAG MACHINE WAS DISCHARGED BECAUSE OF HER INCOMPETENCE. MRS. WOODCOX IDENTIFIED A NUMBER OF BAGS THAT WERE IMPROPERLY PRINTED OR MADE, WHICH SHE TESTIFIED CAME FROM A BOX OF BAGS WHICH BOX BORE THE NAME OF JEAN KELLAR. NO EVIDENCE WAS ADDUCED, HOWEVER, TO INDICATE THE RATIO BETWEEN THE HAND FULL OF BAGS AND JEAN KELLAR'S TOTAL PRODUCTION OF BAGS OVER ANY SPECIFIED TIME PERIOD.

24. WITH REGARD TO SHARON THORN, MRS. WOODCOX STATED THAT "YOU COULDN'T TELL HER ANYTHING". SHE ALSO TESTIFIED THAT SHARON THORN WAS RESPONSIBLE FOR UNDERWEIGHT BAGS OF CHIPS. THE EVIDENCE OF SHARON THORN, HOWEVER, IS THAT HER JOB WAS TO OPEN THE BAGS AND PLACE THEM ON THE BAG MACHINE. THE EVIDENCE OF MARKER IS THAT THE NUMBER OF OUNCES OF CHIPS THAT ARE DEPOSITED IN A BAG IS DETERMINED BY REGULATING THE BAG MACHINE. MARKER'S EVIDENCE IS THAT THE OPERATOR OF THE MACHINE SET THE REGULATOR. THE EVIDENCE OF JEAN KELLAR AND PAULINE DEGENOVA WHO OPERATED THE BAG MACHINE SUGGESTS THAT THE REGULATING OF THE MACHINE WAS LARGELY DONE BY MARKER OR THE MECHANIC.

25. MRS. WOODCOX TESTIFIED THAT LINDA BAKER WAS DISCHARGED BECAUSE SHE WAS NOT CAPABLE OF DOING THE WORK ASSIGNED TO HER. THE EVIDENCE IS THAT HER CHIEF FUNCTION WAS TO FOLD BAGS. SHE ALSO APPEARS TO HAVE DONE OTHER MISCELLANEOUS JOBS. PAULINE DEGENOVA TESTIFIED THAT LINDA BAKER WAS ABLE TO SATISFACTORILY PERFORM THE WORK ASSIGNED TO HER, NAMELY FOLDING BAGS. MRS. WOODCOX WHILE STATING THAT LINDA BAKER WAS DISCHARGED FOR INCOMPETENCE AT THE SAME TIME SEEMS TO SUGGEST THAT LINDA BAKER'S DISCHARGE CAME ABOUT BECAUSE SHE HAD ONLY BEEN HIRED AS A TEMPORARY EMPLOYEE. THIS ALSO APPEARS TO BE MRS. WOODCOX'S EXPLANATION OF THE DISCHARGE OF BERTHA ST. PIERRE AND VIRGINIA THORN.

26. WITH RESPECT TO CHERYLE DEAN, MRS. WOODCOX TESTIFIED THAT SHE WAS AN INEFFICIENT PACKER. THE EXPLANATION FOR THE DISCHARGE OF THERESA GOLDEN, HOWEVER, ACCORDING TO MRS. WOODCOX'S EVIDENCE, APPEARS TO HAVE BEEN BASED ON THE FACT THAT SHE OBSERVED THERESA GOLDEN TALKING WITH TWO OTHER EMPLOYEES AND NOT TENDING TO HER MACHINE WHEN MRS. WOODCOX WENT INTO THE PLANT ON THE MORNING OF JANUARY 12TH. THE EVIDENCE OF PAULINE DEGENOVA IS THAT AS FAR AS SHE COULD SEE THE EXPERIENCED EMPLOYEES WHO WERE DISCHARGED IN JANUARY HAD NOT ONLY PERFORMED SATISFACTORILY IN THEIR JOBS, BUT THAT THE NEW EMPLOYEES WHO REPLACED THEM, BECAUSE OF THEIR LACK OF EXPERIENCE, DID NOT DO AS GOOD A JOB.

27. MRS. WOODCOX TESTIFIED THAT IN OCTOBER OF 1966, ROBERT SPECK HAD INFORMED HER THAT HE WANTED A MALE EMPLOYEE IN THE SHIPPING DEPARTMENT TO DO THE LOADING AND UNLOADING WORK THAT DIANNE BROOKS WAS DOING. SPECK'S EVIDENCE IS THAT HE MADE THE REQUEST SOMETIME IN DECEMBER, AND IN CROSS-EXAMINATION STATED THAT IT MIGHT HAVE BEEN OCTOBER. MRS. WOODCOX'S EVIDENCE IS THAT, SO AS TO BE ABLE TO COMPLY WITH SPECK'S REQUEST, SHE HAD DISCHARGED DIANNE BROOKS, MRS. WOODCOX, HOWEVER, ADMITTED IN EVIDENCE THAT SHE HAD MADE NO PREPARATION TO REPLACE ANY OF THE TWENTY PERSONS WHO WERE DISCHARGED PRIOR TO THE DATE OF THEIR DISCHARGE. SHE TESTIFIED THAT HER FIRST EFFORT TO REPLACE THE DISCHARGED EMPLOYEES WAS MADE WHEN SHE PLACED THE ADVERTISEMENT OF JANUARY 18TH, IN THE LOCAL NEWSPAPER.

28. THE EVIDENCE OF DOUGLAS CRAWFORD, THE LOCAL UNION ORGANIZER WHO CONDUCTED THE ORGANIZING CAMPAIGN, IS THAT OF THE TWENTY EMPLOYEES WHO WERE DISCHARGED IN MID-JANUARY, FIFTEEN WERE MEMBERS OF THE COMPLAINANT UNION AT THE TIME OF THEIR DISCHARGE AND THAT FIVE WERE NOT. HE TESTIFIED THAT TWO OF THE DISCHARGED EMPLOYEES, BOTH OF THEM ARE AMONG THE AGGRIEVED PERSONS IN THIS COMPLAINT, JOINED THE UNION AFTER THEIR DISCHARGE. ALL OF THE AGGRIEVED PERSONS WITH THE EXCEPTION OF SHARON AND VIRGINIA THORN TESTIFIED THAT THEY HAD JOINED THE COMPLAINANT UNION PRIOR TO THE DATE OF THEIR "LAY-OFF". WE THEREFORE MUST CONCLUDE THAT THE THORN SISTERS WERE THE TWO AGGRIEVED PERSONS WHO DID NOT JOIN THE UNION UNTIL AFTER THEIR DISCHARGE.

29. WE WOULD MENTION IN CONNECTION WITH THE AGGRIEVED PERSONS' UNION AFFILIATION, THAT THE EVIDENCE OF THERESA GOLDEN IS THAT ON BEING INTERVIEWED BY GLEN DELINE, A SOLICITOR ACTING ON BEHALF OF THE RESPONDENT, SHE HAD STATED TO HIM THAT SHE HAD NO REASON TO BELIEVE THAT SHE WAS "LAID OFF" BECAUSE OF HER MEMBERSHIP IN THE COMPLAINANT UNION. HER TESTIMONY BEFORE THE BOARD WAS THAT ALTHOUGH AT THE TIME OF HER "LAY-OFF" SHE DID NOT THINK IT WAS BECAUSE OF HER UNION MEMBERSHIP SHE SUBSEQUENTLY CONCLUDED THAT THAT WAS THE CAUSE. BERTHA ST. PIERRE ALSO TESTIFIED THAT SHE HAD MADE A SIMILAR STATEMENT TO MR. DELINE. SHE DID NOT ALTER THAT TESTIMONY BEFORE THE BOARD, STATING THAT SHE THOUGHT IT WAS BECAUSE OF A SHORTAGE OF WORK. ACCORDING TO HER EVIDENCE WHEN SHE ATTENDED AT THE PLANT TO PICK UP HER PAYCHEQUE FROM MRS. WOODCOX, THE LATTER HAD INTIMATED TO HER THAT THE LAY OFF WAS BECAUSE OF A SHORTAGE OF WORK. THE OTHER AGGRIEVED EMPLOYEES WHO WERE QUESTIONED ON THIS MATTER ALL TESTIFIED THAT THEY BELIEVED THEIR "LAY-OFF" CAME ABOUT AS A RESULT OF THEIR MEMBERSHIP IN THE COMPLAINANT UNION.

30. BEFORE MAKING ANY DETERMINATIONS BASED ON THE EVIDENCE ADDUCED IN THE INSTANT CASE, WHICH HAS BEEN OUTLINED IN SUMMARY FORM IN THE PRECEDING PART OF THIS DECISION, WE WOULD DEAL WITH THE QUESTION OF THE ONUS OF PROOF THAT MUST BE MET BY THE PARTIES. THIS ISSUE WAS RAISED BY COUNSEL FOR THE RESPONDENT IN HIS ARGUMENT. THE SUBJECT WAS DEALT WITH AT SOME LENGTH IN THE BOARD'S DECISION IN THE NATIONAL AUTOMATIC VENDING Co. LTD. CASE, C.L.L.C. Vol. 2, 1960-1964, ¶16,278, WHICH CASE WAS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE ACT. THE TWO PASSAGES FROM THAT DECISION, QUOTED BELOW, IN OUR OPINION, SUCCINCTLY OUTLINES THE BOARD'S POSITION ON THE QUESTION OF ONUS IN THIS TYPE OF CASE. THE FIRST PASSAGE AT P. 1163 READS:

THE FACT THAT THE PRIMARY ONUS OF ESTABLISHING THE MERITS OF THE COMPLAINT LIES ON THE COMPLAINANT, DOES NOT, OF COURSE, MEAN THAT THE COMPLAINANT IS BOUND TO DEMONSTRATE BY DIRECT EVIDENCE EACH AND EVERY FACT OR CONCLUSION OF FACT UPON WHICH THE ISSUE IN DISPUTE DEPENDS. REASONABLE AND NECESSARY INFERENCES MAY AND MUST BE DRAWN FROM ALL THE EVIDENCE ADDUCED AND THAT WHICH IS CLEARLY INFERABLE FROM THE EVIDENCE IS AS MUCH PROVED AS IF IT HAD BEEN ESTABLISHED BY DIRECT EVIDENCE. AS WAS POINTED OUT BY THE BOARD IN THE METROPOLITAN MEAT PACKERS LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, Vol. 1, ¶16,230, THE ONUS OF PROOF RESTING ON THE COMPLAINANT IN A CLAIM UNDER SECTION 65 OF THE ACT IS NO GREATER THAN IN AN ORDINARY CIVIL ACTION, NAMELY THAT TO BE SUCCESSFUL A COMPLAINANT MUST PROVE, BY A PREPONDERANCE OF PROBABILITY THAT THE EMPLOYER, HAS, IN THE MANNER ALLEGED IN THE PROCEEDINGS, DISCRIMINATED AGAINST THE EMPLOYEE CONTRARY TO THE ACT.

THE SECOND PASSAGE REFERRED TO ABOVE, AT P. 1164 READS:

NEEDLESS TO SAY, HOWEVER, WE DO NOT FOR A MOMENT SUGGEST, IN PROCEEDINGS UNDER SECTION 65, THAT UNLESS THERE IS EVIDENCE TO THE CONTRARY, DISCRIMINATION MAY BE FOUND AGAINST AN EMPLOYER UPON WHAT AMOUNTS TO MERE PROOF OF A CONTRACT OF HIRING AND DISMISSAL. A COMPLAINANT MAY, HOWEVER, BY PROVING THE CONTRACT OF HIRING, THE DISMISSAL, AND CERTAIN OTHER OBJECTIVE FACTS AND CIRCUMSTANCES, SHORT OF DIRECT EVIDENCE OF DISCRIMINATION, CAST SUCH AN ONUS OF CREDIBLE EXPLANATION ON THE EMPLOYER, WHO ALONE MAY KNOW OR HAVE THE MEANS OF KNOWLEDGE OF THE ACTUAL REASONS FOR THE DISMISSAL, THAT IF SUCH AN EXPLANATION IS NOT GIVEN, AN INFERENCE MAY READILY BE DRAWN THAT THE TREATMENT ACCORDED THE EMPLOYEE WAS DISCRIMINATORY AND CONTRARY TO THE ACT. THAT IT IS OFTEN ONLY THE EMPLOYER WHO HAS THE KNOWLEDGE, OR MEANS OF KNOWLEDGE

OF THE ACTUAL REASONS FOR THE DISCHARGE IS, OF COURSE, ONLY ONE FACTOR OR CIRCUMSTANCE WHICH THE BOARD MAY TAKE INTO ACCOUNT IN ASSESSING THE EVIDENCE AS A WHOLE AND DECIDING WHAT WEIGHT TO GIVE IT. IT PLAINLY CANNOT RELIEVE THE COMPLAINANT OF THE PRIMARY BURDEN OF PROOF TO SATISFY THE BOARD BY CREDIBLE EVIDENCE THAT THE ACTION TAKEN BY THE EMPLOYER WAS DISCRIMINATORY AND CONTRARY TO THE ACT.

31. WE WOULD ALSO, PRIOR TO MAKING ANY FINDINGS BASED ON THE EVIDENCE, QUOTE A FURTHER PASSAGE FROM THE NATIONAL AUTOMATIC VENDING CO. LTD. CASE, (SUPRA), WHICH OUTLINES SOME OF THE CONSIDERATIONS WHICH THE BOARD TAKES INTO ACCOUNT IN ARRIVING AT A DECISION IN COMPLAINTS FILED PURSUANT TO SECTION 65 OF THE ACT. THE PASSAGE AT P. 1162 READS:

IN COMPLAINTS UNDER SECTION 65 THERE IS OFTEN, OF COURSE, CONFLICTING TESTIMONY BETWEEN THE EMPLOYER'S STATEMENTS THAT HE HAS FIRED THE EMPLOYEE FOR INCOMPETENCE OR SOME OTHER NON-DISCRIMINATORY REASON AND THE EMPLOYEE'S ALLEGATIONS, BASED USUALLY ON CIRCUMSTANTIAL EVIDENCE, THAT HIS DISMISSAL WAS FOR THE ULTERIOR PURPOSE OF DEFEATING THE UNION. IN WEIGHING THE EVIDENCE AS TO THESE CONFLICTING CLAIMS, THE BOARD MUST CONSIDER ALL THE CIRCUMSTANCES, INCLUDING THE CREDIBILITY OF WITNESSES, THE NATURE OF THE REASONS GIVEN, IF ANY, AT THE TIME FOR THE EMPLOYER'S ACTION AND THE BASIS THEREFOR, THE EMPLOYMENT HISTORY OF THE EMPLOYEE AFFECTED, THE EXISTENCE OF CONTEMPORANEOUS UNION ACTIVITY, THE PARTICIPATION BY THIS EMPLOYEE AND OTHER EMPLOYEES IN SUCH ACTIVITIES, ANY OVERT ACTS OF THE EMPLOYER WHICH MAY HAVE BEEN IN RESPONSE TO SUCH ACTIVITIES, THE TIMING AND MANNER OF THE DISCHARGE, THE LIKELIHOOD OR PROBABILITY OF THE EMPLOYER'S ACTION FOR THE REASONS GIVEN, AND THE FACT THAT THE TRUE REASONS FOR THE DISCHARGE OFTEN LIE EXCLUSIVELY WITHIN THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF THE EMPLOYER. NEEDLESS TO SAY, HOWEVER, THE BOARD MUST ALSO BE CIRCUMSPECT TO PREVENT AN INNOCENT EMPLOYER FROM BEING VICTIMIZED BY UNFOUNDED OR IMAGINARY CLAIMS OF DISCRIMINATION LAUNCHED MERELY BECAUSE AN EMPLOYEE'S DISCHARGE IS COINCIDENTAL WITH A UNION'S ORGANIZATIONAL CAMPAIGN. IN THIS RESPECT THERE MUST, OF COURSE, BE EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCES OR DIRECT EVIDENCE THAT THE EMPLOYEE HAS BEEN DISCHARGED CONTRARY TO THE ACT.

32. WE TURN NOW TO A CONSIDERATION OF THE EVIDENCE IN THE INSTANT CASE. THE REASON GIVEN BY MRS. WOODCOX FOR THE DISCHARGE OF OVER HALF OF THE RESPONDENT'S EMPLOYEES IN MID-JANUARY OF THIS YEAR WAS THAT THESE EMPLOYEES



WERE INEFFICIENT IN THE PERFORMANCE OF THEIR JOBS IN PACKAGING THE RESPONDENT'S PRODUCTS. IN OUR VIEW, THE EVIDENCE LEAVES LITTLE CREDIBLE SUPPORT TO THE REASONS ADVANCED BY MRS. WOODCOX FOR HER ACTIONS. WITHOUT ATTEMPTING TO EXHAUSTIVELY DEAL WITH ALL ASPECTS OF THE EVIDENCE WE WOULD REFER TO THESE FEATURES OF IT WHICH CAUSE THE BOARD TO REJECT THE EXPLANATION OFFERED BY MRS. WOODCOX FOR THE COURSE OF CONDUCT FOLLOWED BY THE RESPONDENT.

33. ALTHOUGH THE EVIDENCE OF MEMBERS OF MANAGEMENT OF THE RESPONDENT COMPANY INDICATES THAT THERE HAS BEEN A STEADY AND SERIOUS DETERIORATION IN THE MARKETABILITY OF THE RESPONDENT'S PRODUCTS DURING ALL OF 1966, WHICH WAS ATTRIBUTED SOLELY TO THE INEFFICIENCY OF THE EMPLOYEES IN THE PACKAGING DEPARTMENT, NO STEPS WERE TAKEN AT ANY TIME DURING THAT YEAR TO REMEDY THE SITUATION. THIS INCLUDES THE PERIOD AFTER NOVEMBER 18TH, 1966, WHEN, ACCORDING TO MARKER, HE REALIZED THAT THE PROBLEMS OF PRODUCTION STANDARDS IN THE RESPONDENT'S PACKAGING OPERATION HAD ALMOST REACHED CRISIS PROPORTIONS. ASSUMING THIS TO BE THE CASE, ONE SURELY WOULD HAVE EXPECTED MRS. WOODCOX, DESPITE HER DOMESTIC PROBLEMS, TO TAKE SOME, IF LIMITED, STEPS TO IMPROVE PRODUCTION STANDARDS. EVEN ASSUMING THAT MRS. WOODCOX WAS UNABLE TO COPE WITH THE SITUATION, WE FAIL TO UNDERSTAND WHY MARKER OR EVEN MRS. FORBERT, BOTH OF WHOM, ACCORDING TO MARKER, RELIEVED MRS. WOODCOX OF MANY OF HER DUTIES DURING THE PERIOD AFTER NOVEMBER 18TH, DID NOT TAKE ANY ACTION. THE FACT IS, HOWEVER, THAT FOR A PERIOD OF NEARLY TWO MONTHS AFTER NOVEMBER 18TH, NOT ONLY DID THE RESPONDENT NOT DISCHARGE A SINGLE EMPLOYEE, BUT EVEN MORE ASTONISHINGLY, WITH THE EXCEPTIONS ALREADY REFERRED TO IN THE EVIDENCE, THE RESPONDENT DID NOT SO MUCH AS CRITICIZE THE QUALITY OF THE WORK BEING PERFORMED BY THE AGGRIEVED PERSONS OR INDEED WERE THEY EVEN AWARE OF COMPLAINTS ABOUT THE PACKAGING OF THE RESPONDENT'S PRODUCTS.

34. SUDDENLY, HOWEVER, WITHOUT WARNING OR EXPLANATION, WITHIN A PERIOD OF A FEW DAYS AFTER MRS. WOODCOX RETURNED TO THE PLANT ON JANUARY 12TH, SOME TWENTY EMPLOYEES, OVER HALF OF THE PLANT, WERE DISCHARGED. THE EVIDENCE INDICATES THAT AMONG THOSE DISCHARGED WERE MANY OF AT LEAST ONE YEAR'S EXPERIENCE AND SOME WHO HAD BEEN EMPLOYED BY THE RESPONDENT HAVE THREE TO FIVE YEARS. MOREOVER, SOME OF THE DISCHARGED EMPLOYEES WERE NOT EVEN EMPLOYED IN THE PACKAGING DEPARTMENT, WHICH ACCORDING TO THE RESPONDENT WAS THE SOURCE OF ITS TROUBLES. POSSIBLY THE MOST REMARKABLE FEATURE OF THIS WHOLESALE DISCHARGE, HOWEVER, IS THE FACT THAT MRS. WOODCOX, A WOMAN OF MANY YEARS' EXPERIENCE IN PERSONNEL, TOOK THIS ACTION WITHOUT MAKING ANY PRIOR ARRANGEMENTS FOR THE REPLACEMENT OF THE DISCHARGED EMPLOYEES, AT A TIME, ACCORDING TO THE EVIDENCE, WHEN THE PLANT APPEARS TO HAVE BEEN OPERATING AT FULL PRODUCTION.

35. NEVERTHELESS, WE ARE ASKED BY MRS. WOODCOX TO BELIEVE THAT THE TRANSITIONAL PERIOD BETWEEN THE DEPARTURE OF THE DISCHARGED EMPLOYEES AND THE REPLACEMENT AND TRAINING OF THE NEW EMPLOYEES, PRODUCTION WAS MAINTAINED WITHOUT ANY DISRUPTION. WE ARE FURTHER ASKED TO BELIEVE THAT THE QUALITY OF THE PACKAGING DONE BY THE NEW INEXPERIENCED EMPLOYEES WAS, ALMOST IMMEDIATELY, SUPERIOR TO THAT PRODUCED BY THE DISCHARGED EMPLOYEES.

ONE PARTICULARLY INTERESTING ASPECT OF THE RESPONDENT'S POLICY IN HIRING EMPLOYEES TO REPLACE THE DISCHARGED ONES IS THAT THE RESPONDENT WOULD APPEAR TO HAVE GIVEN PREFERENCE TO PERSONS HAVING NO PREVIOUS ASSOCIATION WITH THE COMPANY. AT LEAST THIS WOULD SEEM THE LOGICAL CONCLUSION TO BE DRAWN FROM THE FACT THAT DIANNE BROOKS, WHO THE RESPONDENT CLAIMS WAS DISCHARGED TO MAKE ROOM FOR A MALE EMPLOYEE IN THE SHIPPING DEPARTMENT, WAS NOT OFFERED ANY ALTERNATE EMPLOYMENT IN THE PLANT.

36. WHILE THE EVIDENCE SHOWS A HISTORY OF THE RESPONDENT LAYING OFF EMPLOYEES, THESE LAY-OFFS GENERALLY WERE OF FAIRLY SHORT DURATION AND INVOLVED FEWER EMPLOYEES THAN THE SITUATION WITH WHICH WE ARE HERE CONCERNED. TWO PARTICULAR FEATURES DISTINGUISH THE ACTION OF THE RESPONDENT IN JANUARY OF THIS YEAR AND THE LAY-OFFS THAT OCCURRED AT EARLIER PERIODS. FIRST, THE PREVIOUS LAY-OFFS OCCURRED WHEN THERE WAS A SHORTAGE OF WORK. THE EVIDENCE, HOWEVER, INDICATES THE OPPOSITE CONCLUSION IN JANUARY. SECONDLY, THE RESPONDENT ADMITS THAT THIS WAS NOT A LAY-OFF OF EMPLOYEES, RATHER ALL OF THE EMPLOYEES CONCERNED WERE DISCHARGED. STATED ANOTHER WAY, THERE IS NO EVIDENCE OF ANY PRECEDENT IN THE COMPANY'S EIGHTEEN YEAR HISTORY FOR THE TYPE OF MASS DISCHARGE WHICH TOOK PLACE IN JANUARY.

37. HAVING REGARD TO THE INCONSISTENCIES IN MRS. WOODCOX'S OWN EVIDENCE, THE CONFLICTS BETWEEN HER EVIDENCE AND THAT OF OTHER WITNESSES, AND THE NATURE OF THE EXPLANATIONS OFFERED FOR MUCH OF HER CONDUCT, WE HAVE SERIOUS RESERVATIONS AS TO THE WEIGHT THAT CAN BE GIVEN TO HER TESTIMONY. WE FIND IT IMPOSSIBLE TO BELIEVE THAT DURING THE LAST MONTH AND A HALF OF 1966, DESPITE HER HUSBAND'S ILLNESS, SHE, EITHER ACTING ON HER OWN OR BY DELEGATION TO OTHER MEMBERS OF MANAGEMENT, WOULD NOT HAVE DISCHARGED THE EMPLOYEES CONCERNED BEFORE MID-JANUARY OF 1967, IF HER EVIDENCE AS TO THEIR INCOMPETENCE IS TO BE BELIEVED. WE FIND IT AS HARD TO BELIEVE THAT A WOMAN OF HER EXPERIENCE WOULD MAKE THE DISCHARGES FOR THE REASONS SHE OFFERED, WITHOUT ANY ADVANCE PREPARATION FOR THE REPLACEMENT OF THE DISCHARGED EMPLOYEES. ALTHOUGH IT ADMITTEDLY IS AFTER THE EVENT, WE CANNOT ACCEPT SUGGESTION CLEARLY IMPLIED IN HER EVIDENCE, THAT UPON THE REPLACEMENT OF THE DISCHARGED EMPLOYEES WITH NEW EMPLOYEES, PROBLEMS IN THE PACKAGING DEPARTMENT VIRTUALLY DISAPPEARED. IN TOTAL, WE FIND THE EXPLANATIONS OFFERED BY THE RESPONDENT AND BY MRS. WOODCOX IN PARTICULAR, FOR THE DISCHARGE OF TWENTY EMPLOYEES IN MID-JANUARY OF 1967, WHOLLY IMPLAUSIBLE.

38. AT THIS POINT, WE WOULD ASSESS THE EVIDENCE RELATING TO THE COMPLAINANT UNION'S ORGANIZING CAMPAIGN. IN OUR OPINION, UPON BEING SHOWN CRAWFORD'S CALLING CARD BEARING THE WORDS "LOCAL ORGANIZER" ON JANUARY 4TH, 1967, WHICH HE KNEW CAME FROM AN EMPLOYEE, MARKER MUST HAVE BELIEVED OR STRONGLY SUSPECTED THAT A UNION ORGANIZING CAMPAIGN WAS IN PROGRESS AMONG THE RESPONDENT'S EMPLOYEES. THE VERY FACT THAT HE TOLD MRS. WOODCOX ABOUT IT ON THE MORNING OF HER RETURN ON JANUARY 12TH, IN OUR VIEW, IS INDICATIVE OF HIS CONCERN ABOUT UNION ACTIVITIES IN THE PLANT. WE FIND IT INCREDIBLE THAT MRS. WOODCOX, WHO HAS HAD COMPLETE CONTROL OVER PERSONNEL FOR MANY YEARS, WOULD RESPOND WITH A NONCHALANT "SO WHAT" AS SHE TESTIFIED. INDEED, MARKER'S EVIDENCE IS THAT SHE MADE SOME INQUIRIES ABOUT "ROGER HAVES' UNION CARD". WE FIND IT ALMOST AS DIFFICULT TO BELIEVE THAT MORE DISCUSSION THAN EITHER MRS. WOODCOX'S OR MARKER'S EVIDENCE REVEALS

DID NOT TAKE PLACE ON THAT OCCASION. ON THE EVIDENCE, WE ARE SATISFIED THAT BY NO LATER THAN NOON ON JANUARY 12TH, MRS. WOODCOX WAS APPRAISED OF THE FACT OF, OR AT LEAST BELIEVED THAT, A UNION ORGANIZING CAMPAIGN WAS IN PROGRESS IN THE PLANT.

39. ALTHOUGH MRS. WOODCOX CLAIMS THAT SHE HAD PREPARED HER LIST OF EMPLOYEES FOR DISCHARGE PRIOR TO HER CONVERSATION WITH MARKER ON JANUARY 12TH, WE DO NOT KNOW WHEN HER INSTRUCTIONS TO MAKE THE "LAY-OFF" WERE ISSUED TO MRS. FORBERT. WE FIND IT SIGNIFICANT, HOWEVER, THAT THE VAST MAJORITY OF THE EMPLOYEES WERE NOT INFORMED OF THEIR "LAY-OFF" ON JANUARY 12TH OR 13TH. RATHER, MOST OF THEM ONLY LEARNED OF IT ON SUNDAY, JANUARY 15TH.

40. IN LIGHT OF THE EVIDENCE OF ALL THE CIRCUMSTANCES SURROUNDING THE SUDDEN DISCHARGE OF THE AGGRIEVED PERSONS AND MANY OTHER EMPLOYEES, MRS. WOODCOX'S CONDUCT IS ONLY CONSISTENT WHEN VIEWED AGAINST A BACKGROUND OF THE UNION'S ORGANIZING CAMPAIGN. WHETHER OR NOT MRS. WOODCOX KNEW THAT EACH OF THE AGGRIEVED PERSONS WERE MEMBERS OF THE COMPLAINANT UNION, WE ARE SATISFIED THAT THE WHOLESALE DISCHARGE OF OVER HALF OF THE RESPONDENT'S EMPLOYEES INCLUDING THE AGGRIEVED PERSONS WAS DESIGNED BOTH TO DEFEAT THE COMPLAINANT UNION'S ORGANIZING CAMPAIGN AND TO SERVE AS A WARNING TO THE REMAINING EMPLOYEES OF THE CONSEQUENCES OF SUPPORTING UNION ORGANIZATION IN THE PLANT.

41. THE SINGLE EXCEPTION IS JOHN BOURETTE. HAVING REGARD TO HIS RECORD OF HABITUAL LATENESS, INCLUDING THE MORNING HE WAS DISCHARGED, AND THE EVIDENCE OF THE WARNINGS THAT HAD BEEN ISSUED TO HIM, ALL OF WHICH HE ADMITTED, WE ARE SATISFIED THAT HE WAS DISCHARGED FOR CAUSE. THE COMPLAINT AS IT RELATES TO JOHN BOURETTE ACCORDINGLY IS DISMISSED.

42. WITH REGARD TO THE EIGHT OTHER AGGRIEVED PERSONS HOWEVER, THE BOARD FINDS THAT THEY, IN FACT, WERE DISCHARGED BY THE RESPONDENT BECAUSE OF THEIR SUPPORT, OR THE RESPONDENT'S BELIEF OF THEIR SUPPORT FOR THE COMPLAINANT TRADE UNION. ALTHOUGH THE RESPONDENT ATTEMPTED TO DISGUISE THE REAL PURPOSE FOR THE DISCHARGE OF THE AGGRIEVED PERSONS BY INTIMATING THAT THERE WAS A SHORTAGE OF WORK, A CONCLUSION WHICH IS NOT SUPPORTED BY THE EVIDENCE, WE FIND THAT ALL OF THEIR DISCHARGES FORM PART AND PARCEL OF THE RESPONDENT'S ATTEMPT TO DEFEAT THE COMPLAINANT'S ORGANIZING CAMPAIGN.

43. THE QUESTION AS TO WHETHER THE ACTION OF THE RESPONDENT IN DISCHARGING THE AGGRIEVED PERSONS FALLS WITHIN THE PURVIEW OF SUBSECTION (A) OF SECTION 50 OF THE LABOUR RELATIONS ACT WAS NOT RAISED BY THE RESPONDENT DURING ARGUMENT AT THE HEARING. THIS MATTER, HOWEVER, WAS RAISED BY BOARD MEMBER J.E.C. ROBINSON DURING THE COURSE OF THE BOARD'S DELIBERATIONS AND BOARD MEMBER ROBINSON HAS INDICATED THAT THE APPLICABILITY OF SECTION 50(A) WILL FORM A PART OF HIS DISSENTING OPINION. THE BOARD, ACCORDINGLY, WILL DEAL WITH THIS ISSUE.

44. THE OBVIOUS INTENTION OF SUBSECTION (A) OF SECTION 50 OF THE LABOUR RELATIONS ACT IS TO PREVENT AN EMPLOYER FROM DISCHARGING OR OTHERWISE DISCRIMINATING AGAINST PERSONS ON ACCOUNT OF UNION ACTIVITY. IN THE INSTANT

CASE, THE BOARD HAS FOUND THAT THE EIGHT AGGRIEVED PERSONS, REFERRED TO ABOVE, WERE DISCHARGED BY THE RESPONDENT BECAUSE OF THE RESPONDENT'S BELIEF THAT THEY WERE MEMBERS OR SUPPORTERS OF THE COMPLAINANT UNION. THE BOARD HAS FURTHER FOUND THAT THE RESPONDENT WAS MOTIVATED TO DISCHARGE THEM BY A DESIRE TO DEFEAT THE COMPLAINANT UNION'S ORGANIZING CAMPAIGN. WHETHER OR NOT THE RESPONDENT SPECIFICALLY KNEW THAT THE AGGRIEVED PERSONS WERE MEMBERS OF THE COMPLAINANT UNION AS OF THE DATE OF THE DISCHARGE OR WHETHER, IN FACT, THEY WERE MEMBERS OF THE COMPLAINANT UNION AS OF THE DATE OF THEIR DISCHARGE, THE ACTION OF THE RESPONDENT IN DISCHARGING THE AGGRIEVED PERSONS DOES NOT REMOVE THE RESPONDENT FROM THE AMBIT OF SUBSECTION (A) OF SECTION 50. IF THE BOARD WERE TO INTERPRET THE SUBSECTION SO AS TO GRANT THE RESPONDENT IMMUNITY FROM ANY PENALTY FOR ITS DISCRIMINATORY CONDUCT AGAINST THE AGGRIEVED PERSONS, THE EFFECT WOULD NOT ONLY BE TO DEFEAT THE PURPOSE FOR WHICH THE SUBSECTION WAS DESIGNED BUT ALSO CLEARLY WOULD BE A DENIAL OF NATURAL JUSTICE TO THE AGGRIEVED PERSONS. WHEN AN EMPLOYER ENGAGES IN LARGE SCALE "SHOT GUN" DISCHARGES WITH THE INTENT OF "CATCHING" AS MANY UNION SUPPORTERS AS POSSIBLE, FOR THE BOARD TO HOLD THAT SUBSECTION (A) OF SECTION 50 HAS NO APPLICATION BECAUSE A COMPLAINANT UNION WAS NOT ABLE TO PROVE THAT THE RESPONDENT KNEW THAT EACH OF THE DISCHARGED EMPLOYEES WAS A MEMBER OF THE COMPLAINANT UNION, WOULD BE BOTH ABSURD AND MANIFESTLY UNJUST. THE BOARD ACCORDINGLY FINDS THAT BERTHA ST. PIERRE, THERESA GOLDEN, DIANNE BROOKS, JEAN KELLAR, CHERYL DEAN, LINDA BAKER, SHARON THORN AND VIRGINIA THORN WERE DISCHARGED BY THE RESPONDENT IN CONTRAVENTION OF SUBSECTION (A) OF SECTION 50 OF THE LABOUR RELATIONS ACT.

45. THE BOARD'S DIRECTION AS TO THE STEPS TO BE TAKEN BY THE RESPONDENT ARE SET OUT IN THE BOARD'S DECISION DATED APRIL 11TH, 1967.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: MAY 4, 1967.

I DISSENT.

THE COMPLAINT LODGED WITH THIS BOARD WAS THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 (A) OF THE LABOUR RELATIONS ACT.

THE WORDING OF THE ACT WHICH THE COMPLAINANT ALLEGED HAD BEEN VIOLATED IS AS FOLLOWS:-

"50. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION,

(A) SHALL REFUSE TO EMPLOY OR CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE



THE PERSON WAS OR IS A MEMBER OF A TRADE  
UNION OR WAS OR IS EXERCISING ANY OTHER  
RIGHTS UNDER THIS ACT;"

(THE UNDERLINING IS MINE)

WHAT EVIDENCE WAS PRESENTED BY THE COMPLAINANT WHICH WOULD INDICATE THAT THE RESPONDENT HAD VIOLATED SECTION 50(A) OF THE LABOUR RELATIONS ACT? WITH THE GREATEST OF RESPECT TO MY COLLEAGUES, I WOULD SUGGEST THAT THERE IS NOT A JOT OR TITTLE OF EVIDENCE TO INDICATE SUCH VIOLATION.

THE EVIDENCE PRESENTED BY THE COMPLAINANT TO THE BOARD WAS THE EVIDENCE OF EACH OF THE ALLEGED AGGRIEVED PERSONS, WITH THE EXCEPTION OF TWO OF THEM, WHO DID NOT JOIN THE UNION UNTIL AFTER THEIR RESPECTIVE DISCHARGES, EACH SAID, WHEN QUESTIONED, THAT THEY WERE ADVISED BY THE UNION ORGANIZER NOT TO MENTION TO ANYONE THEIR JOINING THE UNION, AND THAT THEY DID NOT IN FACT DO SO. WHAT KNOWLEDGE, THEREFORE, CAN BE IMPUTED TO THE RESPONDENT FROM THIS EVIDENCE THAT THE ALLEGED AGGRIEVED PERSONS WERE DISCHARGED OR DISCRIMINATED AGAINST BECAUSE EACH "WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT".

THE EVIDENCE OF MOST OF THE AGGRIEVED PERSONS WAS THAT FOR A COUPLE OF MONTHS AFTER THEIR DISCHARGE THEY FELT THEY WERE LAID OFF FOR REASONS OTHER THAN FOR ANY UNION ACTIVITY AND INDEED, SOME WITNESSES AT THE HEARING WERE STILL CONVINCED THAT THEY WERE NOT LAID OFF FOR ANY UNION ACTIVITY.

THE ONLY OTHER PIECE OF EVIDENCE SUBMITTED BY THE COMPLAINANT WAS THAT A UNION ORGANIZER'S BUSINESS CARD WAS PRESENTED TO AN EMPLOYEE. WITHOUT VIOLATION OF ALL OF THE RULES AGAINST HEARSAY EVIDENCE, THIS IS THE EXTENT WITH WHICH THIS EVIDENCE SHOULD BE VIEWED. IT WAS REPRESENTED TO US THAT THE RECIPIENT OF THIS BUSINESS CARD WAS PRESENT AT THE HEARING, BUT HE WAS NOT CALLED UPON TO GIVE ANY EVIDENCE.

HOWEVER, WE DID IN FACT LISTEN TO THE HEARSAY EVIDENCE CONCERNING THIS BUSINESS CARD AND FOUND OUT THAT THE CARD WAS GIVEN BY THE EMPLOYEE TO HIS FOREMAN, WHO SHOWED IT TO ONE, JAMES MARKER, WHO WAS THE VICE-PRESIDENT AND MANAGER OF THE RESPONDENT'S BELLEVILLE OPERATION. MARKER'S REACTION TO BEING SHOWN THE BUSINESS CARD WAS ONE OF COMPLETE INDIFFERENCE. HOWEVER, EVEN IF IT WERE NOT, HOW IS THIS A VIOLATION OF THE WORDING OF SECTION 50(A) AS IT APPLIES TO THE INDIVIDUAL AGGRIEVED PERSONS?

INDEED, I FIND IT COMPLETELY INCOMPREHENSIBLE THAT MY COLLEAGUES SHOULD DISTORT SECTION 50(A) TO ENCOMPASS AND GIVE RELIEF TO TWO PERSONS WHO WERE NOT, AT THE TIME OF THEIR DISCHARGE, MEMBERS OF THE TRADE UNION.

MY COLLEAGUES HAVE SUGGESTED IN PARAGRAPH 44 OF THE MAJORITY DECISION, THAT THE INTERPRETATION OF SECTION 50(A) WHICH I AM CONSTRAINED TO PLACE UPON IT WOULD BE BOTH ABSURD AND MANIFESTLY UNJUST. IF THE

LEGISLATURE WAS SO CLUMSY OR SLOVENLY IN ITS DRAFTSMANSHIP THAT IT WAS UNABLE TO SAY WHAT IT MEANT OR INTENDED TO MEAN, THEN MY COLLEAGUES' INTERPRETATION OF THE SECTION IS QUITE CORRECT. IF, HOWEVER, THE LEGISLATURE INTENDED THAT THE BOARD, IN CONSTRUING THE SECTION OF THE STATUTE, SHOULD APPLY THE ORDINARY MEANING TO CLEAR AND UNAMBIGUOUS WORDS, THEN THE ONLY RATIONAL CONCLUSION THAT MAY RESULT FROM SUCH CONSTRUCTION IS THE MEANING WHICH I FEEL SHOULD BE GIVEN TO THIS SECTION. I AM OF THE OPINION THAT THE LATTER MEANING IS THE ONLY PROPER ONE WHICH MAY BE DRAWN FROM THE WORDS OF THE SECTION. THE SECTION GIVES RELIEF WHERE A PERSON IS REFUSED EMPLOYMENT, OR IS DISCHARGED OR DISCRIMINATED AGAINST BECAUSE HE WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT. THERE IS NO EVIDENCE TO SUBSTANTIATE THE GIVING OF SUCH RELIEF.

WHEN SUCH WORDING IS CLEAR AND DOES NOT GIVE RISE TO AMBIGUITY, IT IS MY OPINION THAT THIS BOARD WOULD BE PRESUMPTUOUS TO QUARE THE INTENTIONS OF THE LEGISLATURE WHICH GAVE RISE TO THE ENACTMENT OF THE SECTION OF THE ACT.

ACCORDINGLY, ON THE BASIS OF THE EVIDENCE BEFORE ME, I HAVE NO HESITATION IN CONCLUDING THAT THE EVIDENCE SUBMITTED IN SUPPORT OF THE COMPLAINT DOES NOT ESTABLISH THAT THE RESPONDENT HAS VIOLATED SECTION 50(A) OF THE LABOUR RELATIONS ACT. I WOULD HAVE DISMISSED THE COMPLAINT.

IN VIEW OF THE FOREGOING, IT IS NOT NECESSARY FOR ME TO REACH ANY AFFIRMATIVE CONCLUSIONS UPON THE PREPONDERANCE OF EVIDENCE WHICH HAS BEEN SUBMITTED BY BOTH PARTIES. HOWEVER, MY COLLEAGUES HAVE DISCUSSED THE BOARD'S DECISION IN THE NATIONAL AUTOMATIC VENDING CO. LTD. CASE, C.L.L.C. VOL. 2, 1960-1964, ¶16,278, AND I WISH TO MAKE SOME COMMENT THERETO. WHILE I HAVE GREAT RESERVATIONS AS TO THE EXTENT TO WHICH THE MAJORITY OF THAT BOARD WENT IN LAYING DOWN PRINCIPLES WITH RESPECT TO MATTERS OF ONUS UPON THE RESPECTIVE PARTIES AND WITH RESPECT ALSO TO THE WEIGHT TO BE GIVEN TO CERTAIN CIRCUMSTANTIAL EVIDENCE, I WOULD AFFIRM CERTAIN PORTIONS OF THAT DECISION. I WOULD AGREE THAT THE PRIMARY ONUS OF ESTABLISHING THE MERITS OF THE COMPLAINT LIES ON THE COMPLAINANT. I WOULD AGREE ALSO THAT THE BOARD MUST BE CIRCUMSPECT TO PREVENT AN INNOCENT EMPLOYER FROM BEING VICTIMIZED BY UNFOUNDED OR IMAGINARY CLAIMS OF DISCRIMINATION LAUNCHED MERELY BECAUSE AN EMPLOYEE'S DISCHARGE IS COINCIDENTAL WITH A UNION'S ORGANIZATIONAL CAMPAIGN. IN THIS RESPECT THERE MUST, OF COURSE, BE EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCES OR DIRECT EVIDENCE THAT THE EMPLOYEE HAS BEEN DISCHARGED CONTRARY TO THE ACT.

I WOULD SAY, HOWEVER, THAT IF THE ONUS IS UPON THE COMPLAINANT OF ESTABLISHING THE MERITS OF THE COMPLAINT, THAT ONUS HAS NOT BEEN SATISFIED BY THE EVIDENCE OF THE MERE SUBMISSION OF A UNION ORGANIZER'S BUSINESS CARD TO AN EMPLOYEE WHO IS NOT A PARTY TO THESE COMPLAINTS, NOR BY EVIDENCE OF MEMBERSHIP OF THE ALLEGED GRIEVORS WHICH WAS NOT TRANSMITTED TO THE COMPANY. THE EVIDENCE WHICH I HEARD IS NOT OF THE SUBSTANTIAL NATURE WHICH I WOULD HAVE ENVISAGED FOR THE COMPLAINANT TO BE SUCCESSFUL. I AM NOT SATISFIED THAT THE EVIDENCE SUPPORTS THE CONCLUSION REACHED BY MY COLLEAGUES. I AM ALSO NOT SATISFIED THAT THE EVIDENCE PRODUCED BY THE PARTIES IS INCONSISTENT WITH OTHER RATIONAL CONCLUSIONS THAN THOSE MADE BY MY COLLEAGUES.

12895-66-U: FRANK GREENE (COMPLAINANT) V. CANADIAN LINEN SUPPLY  
(ONTARIO) LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: FRANK GREENE FOR THE COMPLAINANT,  
W. S. COOK AND W. BALDWIN FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 19, 1967.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR  
RELATIONS ACT.

2. THE COMPLAINANT, FRANK GREENE, COMPLAINS THAT HE HAS BEEN DEALT  
WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE  
ACT. MORE PARTICULARLY, THE COMPLAINANT SUBMITS THAT HE WAS DISCHARGED  
ON MARCH 15TH, 1967 BY THOMAS WATSON, THE SERVICE MANAGER OF THE RESPON-  
DENT, BECAUSE OF HIS ACTIVITIES IN ATTEMPTING TO SECURE THE TERMINATION  
OF THE BARGAINING RIGHTS OF THE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS LOCAL UNION No. 141.

3. GREENE HAD BEEN IN THE EMPLOY OF THE PRESENT OWNERS OF THE  
RESPONDENT COMPANY SINCE IT ACQUIRED THE BUSINESS IN 1959 AND HE HAD BEEN  
EMPLOYED BY THE PREVIOUS OWNERS SINCE 1950. FOR MANY YEARS PRIOR TO HIS  
DISCHARGE HE WAS EMPLOYED AS A DRIVER ON THE NIGHT SHIFT ON A ROUTE THAT  
TOOK HIM FROM LONDON, WHERE THE HEAD OFFICE AND PLANT OF THE RESPONDENT  
ARE LOCATED, TO KITCHENER AND HANOVER AND THEN BACK TO LONDON. HIS JOB  
WAS TO DELIVER AND PICK UP LAUNDRY AT THE RESPONDENT'S TERMINALS AT  
KITCHENER AND HANOVER. HE WAS ALSO REQUIRED TO DELIVER PICK-UP INVOICES  
AND OTHER DOCUMENTS TO THE TERMINAL AT KITCHENER WHICH WERE USED BY THE  
ROUTE DRIVERS OPERATING OUT OF THE KITCHENER TERMINAL ON THE SUCCEEDING  
DAY. THESE DOCUMENTS CONTAINED INFORMATION WHICH ASSISTED THE DRIVERS IN  
MAKING THEIR PICK-UPS AND DELIVERIES AND IN THE COLLECTIONS OF ACCOUNTS.  
IN TURN, GREENE PICKED UP SIMILAR DOCUMENTS AT THE KITCHENER TERMINAL AND  
BROUGHT THEM BACK TO THE LONDON OFFICE.

4. ON THE NIGHT OF MARCH 14TH, 1967, GREENE FAILED TO DELIVER THE PICK-  
UP INVOICES AND OTHER DOCUMENTS TO THE KITCHENER TERMINAL, ALTHOUGH HE DID  
PICK UP THE DOCUMENTS AT KITCHENER AND RETURNED THEM TO THE LONDON OFFICE.  
GREENE'S EVIDENCE IS THAT HE SIMPLY FORGOT TO DO SO. THE EVIDENCE OF  
WATSON IS THAT WHEN HE ARRIVED AT THE OFFICE OF THE RESPONDENT ON THE  
MORNING OF MARCH 15TH, 1967 AT APPROXIMATELY 8:00 A.M., HE WAS INFORMED  
BY HIS ASSISTANT THAT THE KITCHENER TERMINAL HAD REPORTED BY TELEPHONE  
THAT THE PICK-UP INVOICES AND OTHER DOCUMENTS HAD NOT BEEN DELIVERED THE  
PREVIOUS NIGHT. THERE IS NO EVIDENCE AS TO WHEN THE LONDON OFFICE WAS  
NOTIFIED OF THIS SITUATION. WATSON THEREUPON ARRANGED TO HAVE SOMEONE  
FROM THE KITCHENER TERMINAL PICK UP THE DOCUMENTS AT A HALF-WAY POINT  
BETWEEN LONDON AND KITCHENER. EFFORTS WERE THEN MADE TO GET THE DOCUMENTS  
INTO THE HANDS OF THE KITCHENER DRIVERS WHO WERE OUT ON THEIR ROUTES.  
ACCORDING TO THE EVIDENCE THEIR EFFORTS WERE SUCCESSFUL AND THE DOCUMENTS  
WERE DELIVERED TO THE DRIVERS AT SOME POINT DURING THE DAY.

5. GREENE TESTIFIED THAT DURING HIS SEVENTEEN YEARS TENURE WITH THE RESPONDENT HE HAD FORGOTTEN TO DELIVER THE PICK-UP INVOICES AND OTHER DOCUMENTS ON ABOUT HALF A DOZEN OCCASIONS, POSSIBLE THREE OF THOSE OCCASIONS BEING IN THE PAST EIGHT YEARS UNDER THE MANAGEMENT OF THE PRESENT OWNERS. ON ALL OF THESE OCCASIONS, WITH PERHAPS ONE EXCEPTION, HE HAD REALIZED HIS OVERSIGHT AND UPON COMPLETION OF HIS ROUTE HE HAD DELIVERED THE DOCUMENTS TO KITCHENER IN HIS OWN AUTOMOBILE. IN THE INSTANT CASE, HOWEVER, GREENE TESTIFIED THAT HE DID NOT REALIZE THAT HE HAD FAILED TO DELIVER THE DOCUMENTS UNTIL IT WAS BROUGHT TO HIS ATTENTION ON THE MORNING OF MARCH 15TH, 1967 BY WATSON. HIS EVIDENCE IS THAT HE HAPPENED TO BE AT THE RESPONDENT'S PREMISES THAT MORNING IN ORDER TO CHECK ON THE REPAIR OF A TAIL LIGHT ON HIS TRUCK. WATSON'S EVIDENCE ALTHOUGH NOT ENTIRELY CLEAR, IS THAT ON A FEW OCCASIONS OTHER DRIVERS HAD FORGOTTEN TO DELIVER THE DOCUMENTS BUT THAT THESE OVER-SIGHTS HAD BEEN REPORTED IN TIME TO TAKE CORRECTIVE ACTION.

6. THE EVIDENCE IS THAT THE TEAMSTERS, CHAUFFERUS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 WAS CERTIFIED ON MARCH 11TH, 1966 AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT COMPANY. NEGOTIATIONS THEREUPON ENSUED BETWEEN LOCAL 141 AND THE RESPONDENT. IN DECEMBER OF 1966, HOWEVER, THE PARENT INTERNATIONAL UNION TRANSFERRED THE JURISDICTION FOR THE EMPLOYEES OF THE RESPONDENT FROM LOCAL 141 TO LOCAL 847. THE RESPONDENT THEREUPON CONTINUED NEGOTIATIONS WITH LOCAL 847 AND ENTERED INTO A COLLECTIVE AGREEMENT WITH THAT LOCAL UNION ON JANUARY 4TH, 1967.

7. FOR REASONS WHICH IT IS NOT NECESSARY TO OUTLINE HERE, GREENE WAS UNHAPPY ABOUT THE FACT THAT A COLLECTIVE AGREEMENT ENTERED INTO BY THE RESPONDENT WAS WITH LOCAL 847 RATHER THAN LOCAL 141 AND HE DID NOT CONCEAL HIS DISSATISFACTION FROM HIS FELLOW EMPLOYEES. ACCORDING TO THE EVIDENCE, IN THE FIRST WEEK OF FEBRUARY HE WAS CALLED TO THE OFFICE OF DONALD QUICK, THE SALES MANAGER OF THE RESPONDENT. WHEN GREENE ATTENDED AT QUICK'S OFFICE, WATSON WAS ALSO PRESENT. IT APPEARS FROM THE EVIDENCE THAT QUICK INFORMED GREENE THAT HE(QUICK) HAD HEARD OF GREENE'S OBJECTIONS TO THE AGREEMENT SIGNED BY THE RESPONDENT WITH LOCAL 847 AND THAT HE WAS AWARE THAT AS A RESULT GREENE WAS MAKING EFFORTS TO GET RID OF THE UNION. QUICK ON THAT OCCASION TOLD GREENE THAT HE WANT HIM (GREENE) TO GO ALONG WITH THE COLLECTIVE AGREEMENT THAT HAD BEEN ALREADY SIGNED. QUICK STATED THERE HAD ALREADY BEEN CONSIDERABLE TURMOIL AMONG THE EMPLOYEES CONCERNING THE UNION AND HE WAS ANXIOUS TO AVOID ANY FURTHER DIFFICULTIES. GREENE, REFERRING TO A LETTER FROM THE REGISTRAR OF THE BOARD, REPLIED THAT THE CERTIFIED BARGAINING AGENT CHOSEN BY THE EMPLOYEES WAS LOCAL 141 AND NOT LOCAL 847 AND STATED THAT HE ACCORDINGLY CONSIDERED THE AGREEMENT TO BE INVALID. GREENE FURTHER INDICATED THAT HE INTENDED TO TRY TO HAVE THE BARGAINING RIGHTS OF THE UNION TERMINATED.

8. GREENE TOGETHER WITH ANOTHER EMPLOYEE, IN FACT, FILED WITH THE BOARD, NAMING THEMSELVES AS APPLICANTS, AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS TOGETHER WITH A STATEMENT OF DESIRE SIGNED BY EMPLOYEES OF THE RESPONDENT IN SUPPORT OF THE APPLICATION. NOTICE FROM THE BOARD OF GREENE'S APPLICATION WAS RECEIVED BY THE RESPONDENT ON THE MORNING OF MARCH 15TH AND WAS KNOWLEDGE TO WATSON AT THE TIME THAT HE DISCHARGED GREENE.



9. THE EVIDENCE OF WILLIAM BALDWIN, THE MANAGER OF THE LONDON BRANCH OF THE RESPONDENT, IS THAT ON THE MORNING OF MARCH 15TH, 1967 WATSON CAME TO HIM AND INFORMED HIM OF GREENE'S FAILURE TO DELIVER THE PICK-UP INVOICES TO THE KITCHENER TERMINAL THE PREVIOUS NIGHT. WATSON TOLD BALDWIN THAT HE WANTED TO DISCHARGE GREENE FOR THIS OVERSIGHT. ACCORDING TO BALDWIN'S TESTIMONY, WATSON MENTIONED THE TERMINATION APPLICATION MADE BY GREENE AND ENQUIRED OF BALDWIN WHAT INFLUENCE IT MIGHT HAVE. BALDWIN'S EVIDENCE IS THAT HE AUTHORIZED WATSON TO DISCHARGE GREENE IF HIS MOTIVATION FOR SO DOING WAS BECAUSE OF THE INCIDENT ON THE PREVIOUS NIGHT AND NOT BECAUSE OF THE TERMINATION APPLICATION. BALDWIN TESTIFIED THAT WATSON ASSURED HIM THAT THE DISCHARGE ACTION WAS FOR THE FORMER REASON ONLY. WATSON'S EVIDENCE IS THAT HE TOOK THE DISCHARGE ACTION AGAINST GREENE, NOT BECAUSE OF HIS FAILURE TO DELIVER THE PICK-UP INVOICES BUT BECAUSE HE DID NOT REPORT IT. WATSON IN HIS TESTIMONY SEEMED TO SUGGEST THAT HE CONSIDERED THE FAILURE OF GREENE BOTH TO DELIVER THE PAPERS AND TO REPORT IT TO BE A DELIBERATE ACT ON THE PART OF GREENE. IN ANY EVENT, ON THE MORNING OF MARCH 15TH WATSON CALLED GREENE, WHO HAPPENED TO BE ON THE PREMISES, INTO HIS OFFICE. WATSON TOLD GREENE OF HIS OVERSIGHT THE PREVIOUS NIGHT AND DISCHARGED HIM ON THE SPOT.

10. WE WOULD FIRST MENTION THAT WHILE THE FAILURE TO DELIVER THE PICK-UP INVOICES AND OTHER DOCUMENTS CAUSED INCONVENIENCE AND EXTRA WORK TO THE DRIVERS OPERATING OUT OF KITCHENER, THEY WERE ABLE TO CARRY OUT THEIR DUTIES ON MARCH 15TH. FURTHER, ON THE EVIDENCE, IT APPEARS THAT AT SOME POINT DURING THE DAY THE DOCUMENTS, IN FACT, WERE DELIVERED TO THEM. SECONDLY, ON THE EVIDENCE, WE ARE SATISFIED THAT THE FAILURE OF GREENE TO DELIVER THE DOCUMENTS TO KITCHENER WAS A GENUINE OVERSIGHT AND THAT HE WAS NOT AWARE OF HIS OVERSIGHT UNTIL SO INFORMED BY WATSON. WE ACCEPT GREENE'S STATEMENT THAT HAD HE REALIZED HE HAD NOT DELIVERED THE PAPERS TO KITCHENER, HE WOULD EITHER HAVE DONE SO UPON THE COMPLETION OF HIS ROUTE OR WOULD AT LEAST HAVE REPORTED IT. THIRDLY, WE WOULD POINT OUT THAT GREENE WAS AN EMPLOYEE OF THE RESPONDENT COMPANY FOR SEVENTEEN YEARS AND THAT DURING ALL OF THAT PERIOD, EXCEPT ON A VERY FEW OCCASIONS, HE HAD ALWAYS DELIVERED THE PICK-UP INVOICES AND OTHER PAPERS TO THE KITCHENER TERMINAL. MOREOVER, EVEN ON THOSE OCCASIONS, WITH ONE POSSIBLE EXCEPTION, HE RECTIFIED THE SITUATION BY DELIVERING THE PAPERS IN HIS OWN CAR, AFTER THE COMPLETION OF HIS ROUTE.

11. WE FIND IT MOST EXTRAORDINARY THAT AN EMPLOYEE OF GREENE'S LONG SERVICE SHOULD, WITHOUT ANY WARNING, BE DISCHARGED ON WHAT APPEARS TO BE VIRTUALLY THE FIRST OCCASION ON WHICH HE FAILED TO DELIVER THE PICK-UP INVOICES TO KITCHENER AND HAD NOT REPORTED IT. WE FIND THE ACTION OF THE RESPONDENT PARTICULARLY HARSH WHEN ONE REALIZES THAT THE KITCHENER DRIVERS, IN FACT, WERE ABLE AND DID CARRY OUT THEIR ROUTE ASSIGNMENT ON MARCH 15TH. THE BOARD, HOWEVER, IS NOT CALLED UPON IN THIS COMPLAINT TO PASS JUDGMENT UPON THE MERITS OF THE PENALTY EXACTED UPON GREENE BY THE RESPONDENT, EXCEPT IN SO FAR AS THAT THE ACTION TAKEN BY THE RESPONDENT MAY HAVE BEEN INFLUENCED BY GREENE'S ACTIVITIES IN INSTIGATING THE TERMINATION APPLICATION WHICH WAS FILED WITH THE BOARD.

12. IN LIGHT OF THE CONVERSATION BETWEEN QUICK AND GREENE IN EARLY FEBRUARY, WHICH WAS ATTENDED BY WATSON, IT IS APPARENT THAT THE RESPONDENT

DID NOT WANT ANY UPSET OF THE COLLECTIVE BARGAINING RELATIONSHIP WHICH EXISTED BETWEEN ITSELF AND LOCAL 847, ARISING OUT OF THE RECENTLY EXECUTED COLLECTIVE AGREEMENT BETWEEN THEM. FURTHER, THE RESPONDENT OBVIOUSLY WAS SUFFICIENTLY CONCERNED BY THE PROSPECT OF GREENE STIRRING UP DISSATISFACTION AMONG THE EMPLOYEES REGARDING THE UNION AND THE COLLECTIVE AGREEMENT TO SPEAK TO HIM. ALTHOUGH QUICK MADE NO OPEN THREATS TO GREENE, HE LEFT NO DOUBT IN GREENE'S MIND THAT THE RESPONDENT WANTED HIM TO STOP HIS ACTIVITIES. GREENE, HOWEVER, MADE IT JUST AS CLEAR THAT HE INTENDED TO PURSUE A COURSE OF OPPOSITION TO THE UNION. HE, IN FACT, DID SO AS EVIDENCED BY THE TERMINATION APPLICATION THAT HE MADE IN HIS OWN NAME.

13. WE FIND IT MORE THAN COINCIDENTAL THAT ON THE VERY MORNING THAT THE RESPONDENT RECEIVED NOTICE OF GREENE'S TERMINATION APPLICATION WATSON, WHO HAD KNOWLEDGE OF THE APPLICATION, DECIDED THAT GREENE'S FAILURE TO REPORT THAT HE HAD NOT DELIVERED THE PICK-UP INVOICES TO KITCHENER THE PREVIOUS NIGHT MERITED HIS IMMEDIATE DISCHARGE. IN OUR VIEW, THE FACT THAT WATSON FELT IT NECESSARY TO MENTION THE TERMINATION APPLICATION TO BALDWIN AND SOUGHT HIS AUTHORIZATION FOR THE DISCHARGE INDICATES TO US THAT THE TERMINATION APPLICATION WAS VERY MUCH ON HIS MIND. IN ALL THE CIRCUMSTANCES THAT EXIST IN THE INSTANT CASE, THE MERE FACT THAT WATSON TOLD BALDWIN THAT HE WAS NOT DISCHARGING GREENE FOR HIS ACTIVITIES AGAINST THE UNION BY NO MEANS CONVINCES US THAT THAT WAS, IN FACT, THE CASE. INDEED, WHEN WE CONSIDER THAT IN MAKING THE TERMINATION APPLICATION GREENE WAS ACTING CONTRARY TO WHAT WE FIND TO BE AN EXPRESS WARNING BY THE RESPONDENT AGAINST SUCH A COURSE OF ACTION, AND WHEN WE VIEW THE ULTIMATE PENALTY WHICH WAS IMPOSED ON GREENE, AGAINST HIS RECORD OF LONG SERVICE AND THE NATURE OF HIS OFFENCE, WE ARE IMPELLED TO QUOTE THE OPPOSITE CONCLUSION. IN OUR OPINION, THE PRIMARY MOTIVATION OF WATSON PROMPTING HIM TO DISCHARGE GREENE ON MARCH 15TH WAS BECAUSE OF HIS OPPOSITION BOTH TO THE UNION AND THE COLLECTIVE AGREEMENT ENTERED INTO BY THE RESPONDENT, AND MORE PARTICULARLY, BECAUSE OF HIS ACTION IN FILING THE TERMINATION APPLICATION. IN OUR VIEW, THE INCIDENT ON THE NIGHT OF MARCH 14TH WAS MERELY AN EXCUSE UTILIZED BY WATSON TO DISCHARGE GREENE. WE ACCORDINGLY FIND THAT GREENE WAS DISCHARGED ON MARCH 15TH, 1967 BY THE RESPONDENT IN CONTRAVENTION OF SECTION 50 OF THE ACT.

14. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY FRANK GREENE TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HIS DISCHARGE ON MARCH 15TH, 1967.
- (2) AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM MARCH 15TH, 1967 TO AND INCLUDING MAY 12TH, 1967, THE RESPONDENT SHALL FORTHWITH PAY FRANK GREENE THE SUM OF \$450.00.

- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY FRANK GREENE BETWEEN THE DATE OF THE HEARING ON MAY 12TH, 1967, AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

12915-66-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) v. MODERN FOOTWEAR COMPANY, DIVISION OF JACK SCHWEBEL LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: L. A. MACLEAN, AL HERSHKOVITZ AND VITO BARBUTO FOR THE COMPLAINANT, AND J. REINGOLD FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: MAY 30, 1967.

1. THIS IS A COMPLAINT THAT THE AGGRIEVED PERSON, VITO BARBUTO, HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE LABOUR RELATIONS ACT. THE BOARD IS ASKED TO REINSTATE THE AGGRIEVED PERSON WITH FULL PAY FOR WAGES LOST.
2. IT IS CLEAR FROM THE EVIDENCE THAT THE AGGRIEVED TOOK AN ACTIVE PART IN THE ORGANIZATIONAL CAMPAIGN OF THE COMPLAINANT AMONG THE EMPLOYEES OF THE RESPONDENT COMPANY. THAT HE WAS ONE OF THE LEADING OR, AT LEAST, MORE VOCAL MEMBERS OF THE UNION MUST HAVE BEEN KNOWN TO THE RESPONDENT. THE LATTER, IN THE PERSON OF JACK SCHWEBEL, THE OWNER, TOOK STRONG MEASURES TO EXPRESS HIS DISAPPROVAL OF THE ADVENT OF THE UNION AND AT ONE TIME THREATENED THE EMPLOYEES, AT A MEETING CALLED BY HIM, THAT HE WOULD PAY NO ONE WHO DID NOT SIGN A PETITION AGAINST THE UNION. THE AGGRIEVED, AT THAT MEETING, TOLD JACK SCHWEBEL THAT HE DID NOT THINK HE HAD ANY RIGHT TO INTERFERE WITH THE EMPLOYEES IN THE WAY HE DID. THE AGGRIEVED FURTHER TOLD SCHWEBEL THAT HE WOULD NOT SIGN THE PETITION.
3. ON MARCH 29TH, WHICH WAS TWO DAYS AFTER THE AGGRIEVED REFUSED TO SIGN THE PETITION, HE WAS ASKED TO WORK OVERTIME. THERE WAS SOME

DIFFERENCE IN THE EVIDENCE AS TO WHETHER THE REQUEST WAS THAT HE WORK UNTIL SIX O'CLOCK IN THE EVENING OR WHETHER IT WAS THAT HE FINISH OFF A HALF BOX OF SANDALS, UPON WHICH HE HAD BEEN WORKING, BEFORE LEAVING. THE AGGRIEVED'S TESTIMONY WAS THAT HE WAS ASKED TO WORK UNTIL SIX. IN ANY EVENT, THE AGGRIEVED REFUSED TO WORK THE OVERTIME ON THE GROUNDS THAT THE REST OF HIS LINE WAS QUITTING AT FIVE AND HE SAW NO REASON WHY HE SHOULD HAVE TO WORK UNTIL SIX. HE DID NOT REFUSE ON FIRST BEING ASKED TO STAY BY THE FOREMAN, BUT SIMPLY MADE NO REPLY. THE LATTER CAME BACK LATER, AND THE GRIEVEE, ACCORDING TO HIS OWN TESTIMONY, SAID TO HIM, "WHY SHOULD I WORK UNTIL SIX WHEN EVERYONE ELSE ON MY LINE IS GOING HOME AT FIVE O'CLOCK?" THE FOREMAN SAID, "THAT'S AN ORDER". "I SAID, NO - EVERYONE ELSE IS GOING AT FIVE - I GO TOO". THE FOREGOING IS THE AGGRIEVED'S OWN ACCOUNT OF THE CONVERSATION BETWEEN HIMSELF AND HIS FOREMAN. HE CONTINUED, "HE SAID I HAD TO WORK UNTIL SIX TO FINISH THE SANDALS". "I SAID, 'YOU HAVE TWO MEN OVER THERE - THAT'S THEIR JOB NOT MY JOB'". THIS LATTER REMARK STEMS FROM THE FACT THAT THE AGGRIEVED'S USUAL WORK IS ON THE ASSEMBLY LINE AND NOT ON THE SANDALS. HE WORKED ON THE SANDALS ONLY WHEN HE HAD NO WORK TO DO ON HIS MACHINE. TWO OTHER MEN REGULARLY WORKED ON THE SANDALS. HOWEVER, IT IS OF IMPORTANCE TO NOTE THAT THE SANDALS ARE PCECE WORK ITEMS AND THAT WHAT THE AGGRIEVED WAS BEING ASKED TO DO WAS FINISH UP A BOX OF SANDALS UPON WHICH HE HAD BEEN WORKING. THE RESPONDENT'S WITNESSES STATED THEY NEEDED THIS BOX FOR IMMEDIATE SHIPMENT.

4. FOLLOWING THE AGGRIEVED'S REFUSAL, ACCORDING TO HIS OWN TESTIMONY, THE FOREMAN TOLD HIM TO GO TO SEE JACK SCHWEBEL AND TO TELL HIM THAT HE WANTED TO GO HOME AT FIVE. THE AGGRIEVED TESTIFIED THAT TO THIS SUGGESTION HE REPLIED, "NO - I DON'T GO". THE FOREMAN ASKED THE GRIEVEE TO COME WITH HIM AND TOGETHER THEY WENT TO SEE SCHWEBEL. THE FOREMAN EXPLAINED TO SCHWEBEL THAT THE AGGRIEVED WANTED TO LEAVE AT FIVE. SCHWEBEL, THE AGGRIEVED TESTIFIED, TOLD HIM THAT IF HE DID NOT STAY UNTIL SIX HE SHOULD NOT COME IN THE NEXT DAY - HE WOULD BE FIRED. THE AGGRIEVED ANSWERED, "TOMORROW I COME BACK TO WORK". HE ALSO STATED, "IF I DON'T WORK TOMORROW NOBODY WORKS".

5. AFTER LEAVING SCHWEBEL'S OFFICE, THE AGGRIEVED RELATED, HE HAD FURTHER CONVERSATIONS WITH THE FOREMAN DURING THE COURSE OF WHICH THE FOREMAN ASKED HIM AGAIN, "WHY DON'T YOU STAY TO WORK - YOU KNOW JACK. WHY YOU NO STAY?" THE WITNESS SAID THAT TO THIS HE REPLIED, "IT'S NOT MY JOB, WHY SHOULD I STAY UNTIL SIX?" HE THEN LEFT THE PLANT WITHOUT DOING ANY FURTHER WORK.

6. HAVING REGARD TO ALL THE EVIDENCE, WE ARE COMPELLED TO CONCLUDE THAT THE AGGRIEVED WAS THE ULTIMATE AUTHOR OF HIS OWN MISFORTUNE. THE REQUEST OF THE FOREMAN, EVEN IF WE ACCEPT THE AGGRIEVED'S TESTIMONY THAT HE WAS ASKED TO WORK UNTIL SIX O'CLOCK AND NOT MERELY UNTIL THE HALF BOX OF SANDALS WAS COMPLETED, WAS NOT SHOWN TO HAVE BEEN UNREASONABLE OR PROVOCATIVE. THE INITIAL REFUSAL OF THE AGGRIEVED TO COMPLY WITH THE REQUEST WAS NOT IMMEDIATELY SEIZED UPON BY THE COMPANY AS AN EXCUSE FOR DISCHARGE. ON THE CONTRARY, THE COMPANY WARNED THE AGGRIEVED THAT IF HE PERSISTED IN HIS REFUSAL HE WOULD BE DISCHARGED. EVEN AFTER THAT ULTIMATUM, DELIVERED BY SCHWEBEL, THE AGGRIEVED WAS ASKED AGAIN BY THE



FOREMAN TO DO THE WORK. IT SEEMS REASONABLE TO CONCLUDE THAT THE WORDS ADDED TO THIS REQUEST OF THE FOREMAN, "YOU KNOW JACK", WAS AN ADDITIONAL WARNING TO THE AGGRIEVED THAT THIS REFUSAL WOULD IN FACT, BRING ABOUT A DISCHARGE. THERE WAS, THEREFORE, NOTHING PRECIPITATE IN THE COMPANY'S ACTION. THE AGGRIEVED, HOWEVER, MOTIVATED PERHAPS BY THE SAME SPIRIT WHICH MOVED HIM TO TELL SCHWEBEL THAT IF HE DID NOT WORK ON THE MORROW NOBODY ELSE WOULD, DELIBERATELY CHOSE TO PUT THE COMPANY'S ULTIMATUM TO THE TEST, AND, OF HIS OWN VOLITION, INVITED THE VERY CONSEQUENCES OF WHICH HE NOW COMPLAINS.

7. ON THE BASIS OF ALL THE EVIDENCE, THEREFORE, WE ARE NOT SATISFIED THAT THE COMPLAINANT HAS MET THE ONUS OF ESTABLISHING THAT THE AGGRIEVED HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AS ALLEGED BY THE COMPLAINANT.

8. THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER OLIVER HODGES: May 30, 1967.

I DISSENT FROM THE DECISION OF THE MAJORITY.

1. THE COMPLAINANT WAS THE CHIEF ORGANIZER AND SPOKESMAN FOR THE UNION IN THE FACTORY. HE ALONE AMONG THE EMPLOYEES MADE HOUSE CALLS TO ENROLL MEMBERS FOR THE UNION. HE SPOKE OUT AGAINST THE COMPANY OWNER AT A MEETING CALLED BY THE OWNER IN FRONT OF HIS OFFICE IN THE FACTORY WHEN THE OWNER ARGUED THAT THE UNION WOULD REDUCE THE HOURS OF WORK. THE COMPLAINANT SPOKE UP AND SAID THAT HE PREFERRED SHORTER HOURS. THIS MEETING WAS HELD JUST A WEEK BEFORE THE COMPLAINANT WAS FIRED. THE NOTICE OF APPLICATION FOR CERTIFICATION HAD BEEN POSTED ABOUT A WEEK BEFORE THE MEETING.

2. A FEW DAYS LATER, ON MARCH 27TH, THE OWNER HELD A MEETING OF THE EMPLOYEES IN HIS OFFICE WHICH THE COMPLAINANT ATTENDED. AT THIS MEETING, THE OWNER THREATENED THAT UNLESS THE EMPLOYEES SIGNED A PETITION AGAINST THE UNION, WHICH HE SHOWED TO THEM HE WOULD NOT PAY THEM. AGAIN THE COMPLAINANT SPOKE OUT AGAINST THE OWNER SAYING THAT HE WOULD NOT SIGN THE PETITION HIMSELF BUT THAT IF THE OTHERS WANTED TO SIGN IT, THEY COULD. THE COMPLAINANT THEN LEFT THE OFFICE AND THE OTHER EMPLOYEES FOLLOWED HIM OUT NOT HAVING SIGNED THE PETITION.

3. TWO DAYS LATER, ON MARCH 29TH, THE COMPLAINANT WAS ASKED AT 4:30 P.M. TO WORK OVERTIME FROM 5:00 UNTIL 6:00 O'CLOCK. HE WAS NOT GIVEN A REASON FOR THE OVERTIME REQUEST, BEING TOLD ONLY THAT "THIS IS AN ORDER". EARLIER IN THE DAY THE COMPLAINANT'S WORK HAD BEEN SUBJECT TO CLOSE SCRUTINY BY THE OWNER. THE OWNER HAD NEVER BEFORE INSPECTED HIS WORK. A SMALL FLAW WAS DETECTED WHICH THE COMPLAINANT IMMEDIATELY CORRECTED AT THE DIRECTION OF THE OWNER.

4. THE COMPLAINANT, WHEN ASKED TO WORK OVERTIME, WAS ASKED TO DO PIECE WORK WHICH HE INTERMITTENTLY DID BUT WHICH WAS NOT HIS REGULAR JOB.

THIS PIECE WORK WAS REGULARLY DONE BY TWO MALE EMPLOYEES WHO WERE NOT ASKED TO WORK OVERTIME. THE PIECE WORK IN QUESTION HAD BEEN FIRST GIVEN THE COMPLAINANT THAT MORNING WITHOUT ANY INDICATION THAT THERE WAS NEED FOR URGENCY IN COMPLETING IT. FROM THE EVIDENCE, IT APPEARS THAT ONLY A FEW MINUTES WORK WOULD HAVE BEEN REQUIRED TO FINISH THE ORDER, NOT AN HOUR OF OVERTIME.

5. FOLLOWING REFUSAL OF THE ORDER OF THE FOREMAN TO WORK OVERTIME, THE COMPLAINANT AND THE FOREMAN WENT TO THE OWNER'S OFFICE WHERE THE OWNER SAID "IF YOU DON'T WORK UNTIL 6:00 O'CLOCK, DON'T COME BACK TOMORROW, YOU ARE FIRED." THE COMPLAINANT REPLIED, "TOMORROW I COME BACK."

6. THE COMPLAINANT WAS THE FIRST EMPLOYEE TO ARRIVE AT THE FACTORY THE NEXT MORNING. THE COMPLAINANT WAS TOLD BY THE FOREMAN TO WAIT FOR THE OWNER AT THE OFFICE DOOR. WHEN THE OWNER CAME IN THE COMPLAINANT ASKED HIM "WHAT'S WRONG?", AND THE OWNER ANSWERED, "YOU ARE FIRED, YOU ARE FIRED."

7. THE EVIDENCE IS THAT THE COMPLAINANT WAS EMPLOYED ON THE PRODUCTION LINE DOING A JOB REQUIRING REASONABLE CARE AND SKILL. REFUSAL TO WORK OVERTIME UNDER THESE PECULIAR CIRCUMSTANCES ALONE CANNOT BE ACCEPTED AS SUFFICIENT CAUSE TO DISCHARGE A KEY PRODUCTION WORKER. I DO NOT BELIEVE THAT THE COMPLAINANT WOULD HAVE BEEN DISCHARGED FOR THE REASON GIVEN BY THE COMPANY IF HE HAD NOT IDENTIFIED HIMSELF AS STRONGLY SUPPORTING THE UNION. THE COMPLAINANT'S FRANK AND OUTSPOKEN DIFFERENCES WITH THE OWNER ON ISSUES RELATED TO COLLECTIVE BARGAINING AT TWO MEETINGS OF THE EMPLOYEES WHICH THE OWNER HAD CALLED, COULD LEAVE NO DOUBT AS TO WHO THE LOCAL UNION LEADER WAS.

8. ON THE FACTS THIS CONCLUSION IS PARTICULARLY COMPELLING SINCE THE PIECE WORK WHICH HAD BEEN GIVEN HIM IN THE MORNING COULD HAVE BEEN COMPLETED THROUGHOUT THE DAY IF IT HAD BEEN DESCRIBED TO HIM AS BEING RUSH OR URGENT. FURTHERMORE, THE WORK IN QUESTION WAS REGULARLY PERFORMED BY OTHER EMPLOYEES WHO WERE NOT ASKED TO WORK OVERTIME.

9. MY FINDING IS THAT THE COMPLAINANT WAS MANOEUVRED INTO REFUSING A PHONY OVERTIME ASSIGNMENT FOR THE PURPOSE OF DISCHARGING HIM BECAUSE OF HIS UNION ACTIVITY. I AM URGED TO THIS DETERMINATION BY THE OWNER'S OWN ADMISSION OF HIS OVERT ACTS IN OPPOSITION TO THE UNION.

10. I WOULD ORDER THE REINSTATEMENT OF THE EMPLOYEE ON HIS REGULAR JOB WITHOUT LOSS OF ANY BENEFITS AND WITH FULL COMPENSATION FOR TIME LOST.

12931-67-U: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28  
(COMPLAINANT) v. REGAL STATIONERY COMPANY LIMITED (RESPONDENT).

- AND -

12949-67-U: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28  
(COMPLAINANT) v. REGAL STATIONERY COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN  
AND P. J. O'KEEFE.

APPEARANCES AT HEARING: T. E. ARMSTRONG, C. ROSE AND F. ANSELL  
FOR THE COMPLAINANT, J. C. ADAMS, Q.C., FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE: MAY 11, 1967.

1. THESE MATTERS WERE CONSOLIDATED BY THE BOARD ON APRIL 13TH, 1967.
2. THE COMPLAINANT HAS COMPLAINED, PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT, AND HAS ALLEGED THAT THE THIRTEEN AGGRIEVED PERSONS REFERRED TO BELOW WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50 AND 52 OF THE ACT, AND HAS REQUESTED THAT THEY BE REINSTATED IN THEIR EMPLOYMENT WITH COMPENSATION FOR LOSS OF EARNINGS.
3. EACH OF THE AGGRIEVED PERSONS AND MRS. HUTCHINSON, ANOTHER EMPLOYEE, TESTIFIED IN SUPPORT OF THE COMPLAINT.
4. THE FACTS LEADING UP TO THIS COMPLAINT, STATED IN CAPSULE FORM, APPEAR TO BE AS FOLLOWS. AN ORGANIZATIONAL MEETING ATTENDED BY SOME TWENTY-THREE EMPLOYEES WAS CONVENED BY THE COMPLAINANT ON WEDNESDAY, MARCH 29TH, 1967, AT A RESTAURANT LOCATED IN THE VICINITY OF THE RESPONDENT'S PLANT. SOME OF THE EMPLOYEES OF THE RESPONDENT WERE NOTIFIED OF THIS MEETING BY WORD OF MOUTH AND THE FACT OF THE MEETING BECAME GENERAL KNOWLEDGE THROUGHOUT THE PLANT. ALL THE AGGRIEVED PERSONS ATTENDED THE MEETING AND JOINED THE COMPLAINANT UNION.
5. THE DAY OF THE MEETING MR. WOOD, A SUPERVISOR OF THE RESPONDENT, MADE EXTENSIVE INQUIRIES AMONG THE AGGRIEVED EMPLOYEES IN AN ATTEMPT TO GAIN FURTHER INFORMATION CONCERNING THE MEETING. IT IS APPARENT THAT MR. WOOD KNEW THAT THE MEETING WAS A UNION MEETING. HE ADVISED ONE OF THE AGGRIEVED PERSONS THAT "WHOEVER STARTED THE UNION WON'T BE HERE VERY LONG". MR. WOOD DENIED MAKING THIS REMARK TO ANY OF THE EMPLOYEES. MR. WOOD ALSO TESTIFIED THAT MR. LOMAS, THE PLANT MANAGER, INSTRUCTED HIM TO REDUCE THE STAFF OF HIS DEPARTMENT, THE FOLDING DEPARTMENT, BY FIFTY PER CENT. IT IS NOTED THAT THERE WAS NO CORRESPONDING REDUCTION IN THE PRODUCTION DEPARTMENTS WHICH PRODUCED THE MATERIAL WHICH WAS SUBSEQUENTLY HANDLED BY THE FOLDING DEPARTMENT.
6. MRS. HUTCHINSON, THE ONLY WITNESS WITHOUT A DIRECT INTEREST IN THESE PROCEEDINGS, TESTIFIED THAT THE DAY FOLLOWING THE MEETING SHE HAD SECOND THOUGHTS ABOUT JOINING THE UNION, APPARENTLY BECAUSE OF HER TWENTY-TWO YEARS' SERVICE WITH THE RESPONDENT. SHE WENT TO THE OFFICE OF MR. LOMAS, THE PLANT MANAGER, AND ADVISED MR. LOMAS THAT SHE WAS SORRY THAT SHE HAD GONE TO THE MEETING AND JOINED THE UNION. SHE INDICATED THAT SHE WOULD LIKE TO GET HER "PAPER" BACK. MR. LOMAS ADVISED HER THAT HE KNEW EVERYBODY WHO WAS AT THE MEETING AND FURTHER STATED THAT IF THE UNION GOT IN, THE PLANT WOULD CLOSE. THERE WAS SOME DISCUSSION ABOUT THE UNION'S UNSUCCESSFUL ATTEMPT TO ORGANIZE THE PLANT SOME FOURTEEN YEARS BEFORE. MR. LOMAS SUGGESTED THAT MRS. HUTCHINSON WRITE TO THE UNION AND REQUEST THE RETURN OF HER MEMBERSHIP APPLICATION FORM. MRS. HUTCHINSON ADVISED MR. LOMAS THAT HER CO-WORKER JANET AXFORD, ONE OF THE AGGRIEVED PERSONS, WAS ALSO RELUCTANT ABOUT HER DECISION TO JOIN THE UNION.

7. WHILE MR. LOMAS DID NOT CONFIRM THE EVIDENCE OF MRS. HUTCHINSON, IT IS APPARENT FROM HIS ANSWERS WHEN CONFRONTED WITH HER TESTIMONY THAT THE EVIDENCE OF MRS. HUTCHINSON IS THE MORE CREDIBLE TESTIMONY. MR. LOMAS DID NOT CONTRADICT MRS. HUTCHINSON BUT MERELY ASSERTED THAT SHE HAD "READ TOO MUCH INTO THE DISCUSSION".

8. WITHOUT RECITING ALL THE EVIDENCE IN SUPPORT OF OUR FINDINGS, IT IS READILY APPARENT FROM THE EVIDENCE THAT THE RESPONDENT HAD A GREAT DEAL OF KNOWLEDGE CONCERNING THE MEETING AND THE IDENTITY OF THOSE WHO WERE IN ATTENDANCE. IT IS NOT WITHOUT INTEREST TO NOTE THAT ALL THE PERSONS WHOM THE COMPLAINANT WAS SEEKING TO ORGANIZE WERE GIVEN A 10¢ PER HOUR INCREASE ON THE DAY FOLLOWING THE MEETING, AND THAT NO SIMILAR INCREASE WAS GIVEN TO THE OTHER EMPLOYEES OF THE RESPONDENT AT THAT TIME. THE INCREASE WAS ANNOUNCED BY MEANS OF A LETTER TO ALL THE EMPLOYEES CONCERNED, WHICH PROCEDURE WAS NOT IN ACCORD WITH PAST PRACTICES.

9. ON FRIDAY, MARCH 31ST, AT ABOUT 1:30 P.M., THE RESPONDENT LAID OFF OR DISMISSED SEVEN OF THE AGGRIEVED PERSONS WITHOUT NOTICE AND THE SEVEN PERSONS WERE REQUIRED TO LEAVE THE PREMISES IMMEDIATELY. SOME OF THESE PERSONS HAD UP TO SEVEN YEARS' SENIORITY AT THE TIME OF DISMISSAL. NO EXPLANATION WAS GIVEN FOR NOT PERMITTING THE SEVEN PERSONS TO WORK UNTIL THEIR NORMAL QUITTING TIME ON THE DATE OF DISMISSAL. ANOTHER FIVE OF THE AGGRIEVED PERSONS WERE LAID OFF OR DISCHARGED ON APRIL 4TH, 1967. THE RESPONDENT ALLEGED THAT SEVEN OF THE AGGRIEVED PERSONS WERE DISMISSED FOR CAUSE AND FIVE WERE LAID OFF FOR LACK OF WORK. IT IS TO BE NOTED THAT ALL OF SUCH AGGRIEVED PERSONS, WHETHER DISCHARGED FOR CAUSE OR LAID OFF FOR LACK OF WORK, WERE GIVEN A WEEK'S PAY IN LIEU OF NOTICE.

10. MRS. PATRICIAN STEWART, THE THIRTEENTH AGGRIEVED PERSON, QUIT ON MARCH 31ST, 1967, WHEN SHE DISCOVERED THAT TWO OF THE AGGRIEVED PERSONS HAD BEEN DISMISSED. THERE WAS NO EVIDENCE THAT THE RESPONDENT INTENDED TO TAKE ANY ACTION WITH RESPECT TO HER PRIOR TO HER QUITTING, AND HER UNEMPLOYMENT INSURANCE BOOK WAS NOT READY FOR HER AS WAS THE CASE WITH THE OTHER TWELVE AGGRIEVED PERSONS.

11. ABOUT TWO WEEKS PRIOR TO THE LAY OFF, THE RESPONDENT INCREASED ITS SHIFTS FROM TWO TO THREE IN ORDER TO BETTER UTILIZE ITS EMPLOYEES TO INCREASE PRODUCTION. THE THREE SHIFTS WERE STILL OPERATING AT THE TIME OF THE HEARINGS IN THIS MATTER. THE FACT THAT THE RESPONDENT FOUND IT NECESSARY TO TAKE THESE STEPS TO INCREASE PRODUCTION IS INCONSISTENT WITH ITS ALLEGATION THAT THERE WAS LACK OF WORK WHICH NECESSITATED THE LAY-OFFS. IN ADDITION, THERE WAS NO ATTEMPT TO ESTABLISH THE ALLEGED LACK OF WORK BY FILING PRODUCTION FIGURES IN PROOF OF THE ALLEGATION. ON THE WHOLE, THE EVIDENCE OF THE RESPONDENT'S WITNESSES WAS CONTRADICTORY AND NOT IN ACCORD WITH THE OBJECTIVE FACTS OF THE CASE. THE REASONS GIVEN FOR DISCHARGING SEVEN OF THE AGGRIEVED PERSONS WERE NOT SUPPORTED BY FACTS. ON THE CONTRARY, TO ALLEGE, FOR EXAMPLE, THAT AN EMPLOYEE WITH ALMOST SEVEN YEARS' SENIORITY WITH THE COMPANY IS DISMISSED FOR POOR PRODUCTION ON THE DAY AND A HALF IMMEDIATELY PRECEDING THE DISMISSAL, WHEN THE UNCONTESTED EVIDENCE IS THAT SHE WAS NOT SPOKEN TO BY HER SUPERVISOR CONCERNING THE ALLEGED POOR PRODUCTION, IS A SEVERE TEST OF THE CREDULITY OF THE RESPONDENT'S POSITION.



12. WHILE THE ONUS OF ESTABLISHING THE FACT THAT THE AGGRIEVED PERSONS WERE DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT RESTS UPON THE COMPLAINANT, THE COMPLAINANT NEED NOT PROVE ITS CASE BEYOND REASONABLE DOUBT. WHERE THE COMPLAINANT HAS ESTABLISHED, AS IT HAS IN THIS CASE, THAT AGGRIEVED PERSONS WERE DISCHARGED OR LAID OFF BY THE EMPLOYER IMMEDIATELY FOLLOWING AN ATTEMPT BY THE COMPLAINANT UNION TO ORGANIZE THE EMPLOYEES, THE FACT THAT THE AGGRIEVED PERSONS HAD PARTICIPATED IN THIS ATTEMPT, THE FACT THAT THE EMPLOYER'S OFFICIALS WERE ACTIVELY ENGAGED IN ATTEMPTING TO ASCERTAIN THE NATURE OF THE UNION ACTIVITY, THE FACT THAT DISCHARGES OR LAY-OFFS WERE EFFECTED IN MIDDAY RATHER THAN AT THE END OF THE USUAL SHIFT, THE FACT THAT STATEMENTS WERE MADE BY THE EMPLOYER'S OFFICIALS WHICH WERE HOSTILE TO THE UNION AND ITS SUPPORTERS, THE ONUS SHIFTS TO THE EMPLOYER TO PROVIDE A REASONABLE EXPLANATION FOR THE DISCHARGES OR LAY-OFFS. SINCE THE TRUE REASONS FOR THE DISCHARGES OFTEN LIE EXCLUSIVELY WITHIN THE KNOWLEDGE OF THE EMPLOYER, THE ONUS TO PROVIDE THIS EXPLANATION FALLS UPON THE EMPLOYER, WHERE, ON THE EVIDENCE ADDUCED BY THE COMPLAINANT, IT IS REASONABLE TO INFER THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE EMPLOYER CONTRARY TO THE ACT. HAVING REGARD TO ALL THE EVIDENCE AND IN PARTICULAR THE FACTS ABOVE REFERRED TO, AND THE FACT THAT, HAVING REGARD TO THE USUAL TESTS OF CREDIBILITY, THE TESTIMONY OF THE COMPLAINANT'S WITNESSES IS MORE CREDIBLE, WHERE IT IS IN CONFLICT WITH THE TESTIMONY OF THE RESPONDENT'S WITNESSES, THE BOARD IS OF OPINION THAT THE RESPONDENT HAS FAILED TO ESTABLISH THAT THE REAL REASONS FOR THE LAY-OFFS AND DISMISSALS OF THE AGGRIEVED PERSONS IN THIS CASE WERE THE REASONS ALLEGED BY THE RESPONDENT AT THE TIME OF THE DISCHARGE OR AT THE HEARING OF THIS MATTER.

13. THE BOARD IS THEREFORE IMPELLED TO FIND ON THE BASIS OF ALL THE EVIDENCE AND FOR THE REASONS ENUMERATED BY THE BOARD IN THE W. T. HAWKINS LTD. CASE, BOARD FILE NO. 12643-66-U, MAY 4TH, 1967, AND THE CASES THEREIN REFERRED TO, THAT THE COMPLAINANT HAS MET THE ONUS UPON IT TO PROVE THAT ELIZABETH GRIBIN, ANNE MILJANOVIC, EILEEN LAIRD, LENORE HUGHSON, JANET AXFORD AND LYNNE MEHEW WERE DISCHARGED OR LAID OFF BY THE RESPONDENT ON MARCH 31ST, 1967, CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AND THAT NORMAN HYDE, ROBERT LUFFMAN, HARRIETT N. STEWART, PAT O'MEARA, BETTY GORDON AND WILLIAM GORDON WERE LAID OFF OR DISCHARGED BY THE RESPONDENT ON APRIL 4TH, 1967, CONTRARY TO THE PROVISIONS OF THE ACT.

14. HOWEVER, SINCE WE HAVE FOUND THAT PATRICIA STEWART TERMINATED HER EMPLOYMENT WITH THE RESPONDENT, WE FIND THAT SHE IS NOT ENTITLED TO ANY RELIEF, AND THE COMPLAINT WITH RESPECT TO PATRICIA STEWART IS ACCORDINGLY DISMISSED.

15. THE BOARD DETERMINES THAT:

- (A) ELIZABETH GRIBIN, LYNNE MEHEW, LENORE HUGHSON, JANET AXFORD, EILEEN LAIRD, ANNE MILJANOVIC, NORMAN HYDE, HARRIETT N. STEWART, PAT O'MEARA, BETTY GORDON, WILLIAM GORDON AND ROBERT LUFFMAN SHALL BE REINSTATED FORTHWITH IN THE POSITIONS HELD BY THEM AT THE TIME OF THEIR DISCHARGE;

- (B) THAT THE RESPONDENT PAY TO  
HARRIETT N. STEWART THE SUM OF \$57.38  
LENORE HUGHSON THE SUM OF \$149.70  
ELIZABETH GRIBIN THE SUM OF \$33.15  
LYNNE MEHEW THE SUM OF \$22.10  
JANET AXFORD THE SUM OF \$127.50  
PAT O'MEARA THE SUM OF \$34.43  
ROBERT LUFFMAN THE SUM OF \$144.93  
BETTY GORDON THE SUM OF \$80.33  
WILLIAM GORDON THE SUM OF \$217.60

FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY THEM BETWEEN THE DATES OF THEIR RESPECTIVE SEPARATIONS FROM EMPLOYMENT AND APRIL 27TH, 1967, THE DATE OF THE HEARING IN THIS MATTER;

- (C) THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS THAT ELIZABETH GRIBIN, LYNNE MEHEW, LENORE HUGHSON, JANET AXFORD, EILEEN LAIRD, ANNE MILJANOVIC, NORMAN HYDE, HARRIETT N. STEWART, PAT O'MEARA, BETTY GORDON, WILLIAM GORDON AND ROBERT LUFFMAN SUSTAINED BY REASON OF THEIR HAVING BEEN DEALT WITH CONTRARY TO THE ACT BETWEEN THE 27TH DAY OF APRIL 1967 AND THE DATE OF THEIR REINSTATEMENT; AND
- (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (B) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE AN OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNTS, IF ANY, TO BE PAID.

DECISION OF BOARD MEMBER H. F. IRWIN: MAY 11, 1967.

1. I DISSENT.
2. THE EVIDENCE ADDUCED AT THE HEARINGS IN THIS MATTER HAD BEEN CAREFULLY REVIEWED AND FULLY DISCUSSED BY THE MEMBERS OF THE HEARING PANEL. IT IS APPARENT THAT FURTHER DISCUSSION WOULD NOT ALTER OUR RESPECTIVE VIEWS.
3. ON THE EVIDENCE ADDUCED AT THE HEARINGS IN THIS MATTER, I AM SATISFIED THAT THE RESPONDENT DID NOT LAY-OFF OR DISCHARGE THE AGGRIEVED PERSONS CONTRARY TO SECTIONS 48, 50 AND 52 OF THE LABOUR RELATIONS ACT AS ALLEGED BY THE COMPLAINANT AND I WOULD HAVE DISMISSED THE COMPLAINTS.
4. THESE PERSONS WERE LAID-OFF OR DISCHARGED BY THE RESPONDENT BECAUSE OF LACK OF WORK ALONG WITH OTHER EMPLOYEES WHO HAVE MADE NO COMPLAINT. SIX OF THE AGGRIEVED PERSONS HAD ALREADY BEEN RECALLED TO WORK AT THE DATE

OF THE LAST HEARING. IT IS INCONCEIVABLE TO ME THAT MANAGEMENT WOULD NOW BE RECALLING ANY OF THESE PERSONS IF, AS ALLEGED, THEY HAD BEEN LAID-OFF SOLELY FOR UNION ACTIVITY. MOREOVER, ALL THE AGGRIEVED PERSONS RECEIVED THE 10¢ PER HOUR WAGE INCREASE GIVEN TO ALL PLANT EMPLOYEES RECENTLY AS A COST-OF-LIVING BONUS. NO DISTINCTION WHATEVER HAS BEEN MADE BY THE RESPONDENT BETWEEN THE AGGRIEVED PERSONS AND THE OTHER EMPLOYEES. IT IS FOR THESE REASONS THAT I WOULD HAVE DISMISSED THE COMPLAINTS.

12985-67-U: CANADIAN TEXTILE COUNCIL (COMPLAINANT) v. HARDING BRANTFORD LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: MAY 26, 1967.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, CARL PIERCE, WAS DEALT WITH CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT HE WAS DISCHARGED ILLEGALLY AND WITHOUT JUST CAUSE BECAUSE OF HIS MEMBERSHIP IN AND LAWFUL ACTIVITIES ON BEHALF OF THE COMPLAINANT TRADE UNION.
2. IT IS CLEAR FROM THE REPORT OF THE FIELD OFFICER THAT THERE IS A COLLECTIVE BARGAINING AGREEMENT IN EFFECT BETWEEN THE COMPLAINANT AND THE RESPONDENT WHICH CONTAINS A PROCEDURE FOR THE PROCESSING OF GRIEVANCES AND FOR THE RESOLUTION OF GRIEVANCES OR DISPUTES BY A BOARD OF ARBITRATION WHOSE DECISION SHALL BE FINAL AND BINDING. IT IS ALSO CLEAR THAT A GRIEVANCE WAS LODGED ON BEHALF OF THE AGGRIEVED PERSON WHO IS THE SUBJECT OF THIS COMPLAINT.
3. IN THE NATIONAL SHOWCASE CO. LTD. CASE, 61 C.L.L.C. 901, THE BOARD STATED AS FOLLOWS:

IT SEEMS TO US, THEREFORE, IN DETERMINING WHETHER WE SHOULD EXERCISE OUR DISCRETION UNDER SECTION 57, SUBSECTION 4, IT IS PROPER TO TAKE INTO ACCOUNT THE FACT THAT AN ALTERNATE REMEDY EXISTS. IN ADDITION, WHEN THIS REMEDY IS ONE WHICH THE PARTIES THEMSELVES HAVE AGREED TO AND, FURTHER, INVOLVES A PROCEDURE UNDER WHICH THE PARTIES AGREE TO ATTEMPT TO SETTLE THE DISPUTE THEMSELVES BEFORE BRINGING IN AN OUTSIDER, THAT IS, AN ARBITRATOR, WE HAVE NO HESITATION IN SAYING THAT WE OUGHT NOT TO PROCEED FURTHER UNDER SECTION 57, SUBSECTION 4. (NOW 65(4)).

WHILE IN THE SPECIAL CIRCUMSTANCES OF A PARTICULAR CASE WE MIGHT WELL BE PERSUADED TO TAKE THE CONTRARY VIEW, IN ALL THE CIRCUMSTANCES

OF THIS CASE WE CAN FIND NO REASON TO DEPART  
FROM THE GENERAL PRINCIPLE ENUNCIATED ABOVE.

THE ABOVE STATEMENT APPLIES EQUALLY TO THE INSTANT CASE. REFERENCE IS ALSO MADE TO SCARBOROUGH BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, PAGES 822 AND 836, AND TO GENERAL BAKERIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, PAGE 823.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD DOES NOT DEEM IT ADVISABLE TO INQUIRE FURTHER INTO THE COMPLAINT AND THE COMPLAINT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - SECTION 79(2)

12688-66-14: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. LIBBY, MCNEILL & LIBBY OF CANADA LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: T. E. ARMSTRONG, JAMES HOGAN AND FRED DOUGLAS FOR THE APPLICANT, T. D. DELAMERE AND RUSSEL OKE FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER  
E. BOYER: MAY 1, 1967.

1. THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT AND HAS REQUESTED THAT THE BOARD DETERMINE WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

2. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MARCH 15, 1967, THE RESPONDENT REQUESTED THAT THE MATTER BE LISTED FOR HEARING IN ORDER THAT IT COULD MAKE REPRESENTATIONS AS TO WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER.

3. AT THE HEARING, THE RESPONDENT ARGUED THAT THE THREE PERSONS IN DISPUTE EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(b) OF THE ACT. HOWEVER, THE RESPONDENT ACKNOWLEDGED THAT IT DID NOT CLAIM THAT THE THREE PERSONS EXERCISED SUPERVISORY FUNCTIONS. THE RESPONDENT ALLEGED THAT THE THREE PERSONS WERE PART OF THE MANAGEMENT TEAM AND PARTICIPATED IN MANAGEMENT DECISIONS.

4. THE FIRST PERSON DEALT WITH IN THE EXAMINER'S REPORT WAS DAVID FLEMING CLASSIFIED AS A PROGRAMMER ANALYST. MR. FLEMING IS DIRECTLY RESPONSIBLE TO THE MANAGER OF DATA PROCESSING. MR. FLEMING'S DUTIES INCLUDE THE DESIGNING, IMPLEMENTING AND TESTING THE CONVERSION OF MANUAL SYSTEMS TO SYSTEMS TO BE RUN ON DATA PROCESSING EQUIPMENT. IT APPEARS



FROM THE REPORT THAT MR. FLEMING ATTENDS CERTAIN MEETINGS OF MANAGEMENT FOR THE PURPOSE OF GAINING INFORMATION IN ORDER TO ACQUIRE THE KNOWLEDGE REQUIRED TO DESIGN AND IMPLEMENT THE CHANGES FROM MANUAL TO DATA PROCESSING SYSTEMS.

5. MR. FLEMING IS GIVEN AN OBJECTIVE AND IS REQUIRED TO DESIGN THE NECESSARY SYSTEM TO IMPLEMENT THIS OBJECTIVE. IT IS NOT MR. FLEMING'S RESPONSIBILITY TO DETERMINE THE OBJECTIVE, THIS DETERMINATION IS MADE BY SOME PERSON IN MANAGEMENT. MR. FLEMING IS REQUIRED TO EXERCISE HIS HIGHLY TECHNICAL EXPERT KNOWLEDGE IN SUCH A WAY AS TO IMPLEMENT THE OBJECTIVES DETERMINED BY SOMEONE ELSE. WHILE THE DETERMINATION OF THE OBJECTIVES GIVEN TO MR. FLEMING IS UNDOUBTEDLY A MANAGERIAL FUNCTION, THERE IS NO INDICATION THAT MR. FLEMING PARTICIPATES IN THE DETERMINATION OF SUCH OBJECTIVES, BUT IS INVOLVED SOLELY IN THE IMPLEMENTATION OF THE OBJECTIVE.

6. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THE BOARD FINDS THAT THE IMPLEMENTATION OF THE OBJECTIVE IS NOT A MANAGERIAL FUNCTION BUT IS A JOB REQUIRING A VERY HIGH DEGREE OF TECHNICAL KNOWLEDGE AND SKILL. WHILE THE EXERCISE OF SUCH SKILL REQUIRES DECISIONS ON THE PART OF MR. FLEMING THESE ARE NOT POLICY DECISIONS OR DECISIONS OF A MANAGERIAL NATURE BUT ARE TECHNICAL PROCEDURAL DECISIONS.

7. THE BOARD ACCORDINGLY FINDS THAT DAVID FLEMING DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

8. DOUGLAS RITCEY, ANOTHER PERSON WHOSE DUTIES ARE IN DISPUTE, IS EMPLOYED BY THE RESPONDENT AS A PRODUCT PROCUREMENT SUPERVISOR. MR. RITCEY IS DIRECTLY RESPONSIBLE TO THE PURCHASING AGENT AND HAS THE RESPONSIBILITY FOR THE PURCHASE OF CITRUS PRODUCTS, FROZEN FOODS AND CALIFORNIAN FRUITS.

9. MR. RITCEY DOES NOT DETERMINE THE AMOUNT OF SUCH PRODUCTS TO BE PURCHASED BUT IS REQUIRED TO MAKE THE NECESSARY PURCHASES IN ORDER TO FILL THE ORDERS PLACED BY THE VARIOUS BRANCHES OF THE COMPANY. MR. RITCEY'S FUNCTIONS APPEAR TO BE CIRCUMSCRIBED AND PREDETERMINED TO A LARGE DEGREE. NOT ONLY THE AMOUNT TO BE PURCHASED IS DETERMINED BY OTHERS BUT IN ADDITION THE MAXIMUM PRICE IS ALSO FIXED. WHILE MR. RITCEY DOES, IN FACT, ATTEMPT TO MAKE HIS PURCHASES BELOW THE MAXIMUM PRICE BY KEEPING AN EYE ON THE MARKET AND BUYING AT THE BEST PRICE, THE NATURE OF HIS DISCRETION IS LIMITED. IT WOULD ALSO APPEAR FROM THE EXAMINER'S REPORT THAT HIS WORK COMES UNDER THE SUPERVISION OF THE PRODUCT MANAGER AS WELL AS THE PURCHASING AGENT TO WHOM HE REPORTS. MR. RITCEY APPEARS TO SPEND THE GREATEST PROPORTION OF HIS TIME EXERCISING THE FUNCTIONS OF A BUYER AND IS NOT REQUIRED TO MAKE POLICY DECISION OF ANY KIND. HE IMPLEMENTS THE DECISIONS OF OTHERS USING HIS SPECIALIZED KNOWLEDGE OF PRICE AND SOURCES OF SUPPLY.

10. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT DOUGLAS RITCEY DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

11. A. PATRICK FITZGERALD, A PERSON CLASSIFIED BY THE RESPONDENT AS STAFF ASSISTANT TO THE CONTROLLER, WAS ALSO EXAMINED. MR. FITZGERALD HAS CERTAIN POWERS OF RECOMMENDATION AND IS ENTITLED TO MAKE CERTAIN DECISIONS SUCH AS AUTHORIZING THE WRITE-OFF OF PREMIUM ITEMS WHERE THERE IS A SHORTAGE, TO A VALUE OF \$150. IT WOULD APPEAR, HOWEVER, THAT MR. FITZGERALD'S AUTHORITY IS OF A LIMITED NATURE IN PRE-DETERMINED AREAS, AND APART FROM SUCH INCIDENTAL FUNCTIONS, HE PERFORMS WORK WHICH WOULD NORMALLY BE PERFORMED BY EMPLOYEES FOR THE PURPOSES OF THE ACT.

12. THE BOARD THEREFORE FINDS THAT A. PATRICK FITZGERALD DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

13. IN ARRIVING AT ITS DECISIONS IN THIS CASE, THE BOARD HAS TAKEN INTO CONSIDERATION THE DECISION OF THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, AND THE REASONS FOR DECISION CONTAINED THEREIN.

DECISION OF BOARD MEMBER R. W. TEAGLE: MAY 1, 1967.

I DISSENT.

I WOULD FIND THAT DAVID FLEMING AND DOUGLAS RITCEY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND, ACCORDINGLY, ARE NOT EMPLOYEES FOR THE PURPOSES OF THE ACT.

#### INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

13034-67-JD CANADA MILLWRIGHTS LIMITED (COMPLAINANT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO; LOCAL 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA; AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NO. 721, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOUR (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: W. S. COOK, R. PHILLIPS FOR THE COMPLAINANT AND A. E. GOLDEN, A. MCISAAC FOR THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NO. 721, AFFILIATED WITH

THE AMERICAN FEDERATION OF LABOUR AND JOHN CARRUTHERS FOR THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO AND NO ONE APPEARED FOR LOCAL 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA.

DECISION OF THE BOARD:

MAY 24, 1967.

1. THE COMPLAINANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION PURSUANT TO SECTION 66 OF THE LABOUR RELATIONS ACT WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IT HAS MADE.

2. THE COMPLAINANT IS THE GENERAL MECHANICAL CONTRACTOR FOR THE CONSTRUCTION OF A NEW MANUFACTURING PLANT OWNED BY WARNER-LAMBERT CANADA LIMITED LOCATED AT 2200 EGLINTON AVENUE EAST IN METROPOLITAN TORONTO. AS MECHANICAL CONTRACTOR, ONE OF THE RESPONSIBILITIES OF THE COMPLAINANT IS TO MOVE PROCESSING EQUIPMENT FROM THE LOADING DOCK OF WARNER-LAMBERT CANADA LIMITED TO ITS POSITION IN THE PLANT. THE EQUIPMENT IS THEN LEVELLED AND ANCHORED. THE PROCESSING EQUIPMENT WITH WHICH WE ARE HERE CONCERNED IS LISTERINE MIXING TANKS AND STORAGE TANKS, HAIRWAVE LOTION AND MIXING TANKS, AGEROL MIXING RANKS AND OTHER MIXING AND STORAGE TANKS FOR THE OWNERS' PHARMACEUTICAL PRODUCTS. A FORT-LIFT TRUCK UNLOADS THE TANKS FROM TRUCKS AND TRANSFERS THEM TO A FREIGHT ELEVATOR WHERE THEY ARE PLACED ON A FOUR-WHEELED DOLLY AND TRANSPORTED TO THE SECOND FLOOR OF THE PLANT. THE TANKS ARE THEN WHEELED FROM THE ELEVATOR TO THEIR PROPER LOCATION IN THE PLANT. A FORK-LIFT TRUCK IS USED TO PLACE THEM EITHER ON THE FLOOR OR ON A RAISED STAND. THE TANKS ARE LEVELLED AND ANCHORED. PIPING IS THEN ATTACHED TO THE TANKS LEADING TO THE VARIOUS FILLERS LOCATED IN THE FIRST FLOOR OF THE PLANT.

3. THE COMPLAINANT COMMENCED TO MOVE THE ABOVE MENTIONED PROCESS EQUIPMENT INTO THE PLANT OF THE OWNER ON MARCH 1ST, 1967, AND THIS WORK WAS STILL IN PROGRESS AS OF THE DATE OF THE BOARD'S HEARING ON MAY 10TH, 1967. THE COMPLAINANT ASSIGNED THE WORK OF MOVING THE PROCESSING EQUIPMENT, PLACING IT IN POSITION, AND LEVELLING AND ANCHORING IT TO MIXED CREWS COMPOSED OF MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2309 (HEREINAFTER REFERRED TO AS MILLWRIGHTS) AND MEMBERS OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (HEREINAFTER REFERRED TO AS IRONWORKERS). IT IS NOT DISPUTED THAT THE PIPING WORK, WHICH IN ANY EVENT IS BEING PERFORMED BY A SUB-CONTRACTOR, IS WORK FALLING WITHIN THE JURISDICTION OF MEMBERS OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (HEREINAFTER REFERRED TO AS PLUMBERS).

4. ON APRIL 18TH, 1967, FOR THE FIRST TIME SINCE THE COMPLAINANT BEGAN THE INSTALLATION OF THE PROCESS EQUIPMENT, THE PLUMBERS ASSERTED THAT THE WORK BEING PERFORMED FOR THE COMPLAINANT BY THE MILLWRIGHTS AND IRONWORKERS FELL WITHIN THE JURISDICTION OF THE PLUMBERS. THE PLUMBERS THEREUPON ATTEMPTED TO INDUCE THE COMPLAINANT TO ASSIGN THE WORK TO THEM. DESPITE MEETINGS BETWEEN THE COMPLAINANT AND THE BUSINESS AGENTS OF

THE THREE RESPONDENT UNIONS THERE HAS BEEN NO RESOLUTION OF THE WORK ASSIGNMENT DISPUTE SATISFACTORY TO ALL PARTIES. THE COMPLAINANT HOWEVER, HAS MAINTAINED ITS ORIGINAL ASSIGNMENT OF THE WORK TO THE MILLWRIGHTS AND IRONWORKERS. WE WOULD MENTION HERE THAT WHILE IT WAS THE PLUMBERS WHO CHALLENGED THE WORK ASSIGNMENT MADE BY THE COMPLAINANT THEY WERE NOT REPRESENTED AT THE BOARD HEARING ALTHOUGH SERVED WITH A COPY OF THE COMPLAINT AND A NOTICE OF THE HEARING.

5. THIS IS THE FIRST COMPLAINT FILED WITH THE BOARD PURSUANT TO SECTION 66 OF THE ACT WHEREIN THE BOARD HAS BEEN CALLED UPON TO MAKE A DIRECTION RELATING TO CONFLICTING JURISDICTIONAL CLAIMS OVER A WORK ASSIGNMENT. THE BOARD THEREFORE, FOR THE GUIDANCE OF PARTIES IN ANY SUBSEQUENT COMPLAINTS PROPOSES TO INDICATE SOME OF THE FACTORS THAT IT MAY TAKE INTO ACCOUNT IN DETERMINING ITS DIRECTIONS IN WORK ASSIGNMENT DISPUTES. IN DOING SO, HOWEVER, WE ARE NOT SUGGESTING THAT THE FACTORS MENTIONED ARE ALL INCLUSIVE OR THAT THEY NECESSARILY ARE OF EQUAL IMPORTANCE.

6. BRIEFLY THEN, THE JURISDICTION OF THE TRADE UNIONS ASSERTING CONFLICTING CLAIMS AS SET OUT IN THEIR CONSTITUTIONS OR AS INCORPORATED IN AND FORMING PART OF ANY COLLECTIVE AGREEMENTS BETWEEN THEMSELVES AND THE EMPLOYER WHO IS DOING THE WORK IN DISPUTE, OBVIOUSLY WOULD BE A FACTOR TAKEN INTO ACCOUNT BY THE BOARD. ANY WRITTEN AGREEMENTS OR EVEN INFORMAL UNDERSTANDINGS BETWEEN THE DISPUTING UNIONS AS TO THE RESPECTIVE AREAS OF THEIR WORK JURISDICTION ALSO WOULD BE A RELEVANT CONSIDERATION. AS WELL, RULINGS, AWARDS OR DECISIONS MADE BY AUTHORIZED INDIVIDUALS OR TRIBUNALS RELATING TO THE SAME OR A SIMILAR TYPE OF WORK ASSIGNMENT DISPUTE MIGHT HAVE AN INFLUENCE ON THE BOARD'S DETERMINATION, AS WOULD THE PAST PRACTICE IN ASSIGNING THE WORK IN QUESTION WHETHER IT BE IN AN AREA OR AN INDUSTRY. FINALLY, THE NATURE OF THE WORK, THE SKILLS INVOLVED, SAFETY, EFFICIENCY AND ECONOMY IN THE PERFORMANCE OF THE WORK ARE FACTORS THAT MAY BE OF SIGNIFICANCE.

7. WE WOULD TURN NOW TO A CONSIDERATION OF THE RELEVANT FACTS OF THE INSTANT COMPLAINT. THE COMPLAINANT IS A PARTY TO OR BOUND BY COLLECTIVE AGREEMENTS WITH THE RESPONDENT UNIONS REPRESENTING THE MILLWRIGHTS, THE IRONWORKERS AND THE PLUMBERS AND HAS HAD COLLECTIVE BARGAINING RELATIONSHIPS WITH ALL THREE UNIONS FOR THE PAST FIFTEEN YEARS. MOREOVER, THE COMPLAINANT HAS REGULARLY HAD MEMBERS OF THE THREE UNIONS IN ITS EMPLOY OVER THIS PERIOD INCLUDING THE TIME AT WHICH THE INSTANT DISPUTE AROSE.

8. THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE IRONWORKERS PROVIDES IN PART THAT THE AGREEMENT COVERS ALL EMPLOYEES OF THE COMPLAINANT THAT WORK ON INSTALLATION, ERECTION, RIGGING AND OTHER WORK NORMALLY PERFORMED BY IRONWORKERS. BY A SCHEDULE WHICH IS ATTACHED TO AND FORMS PART OF THE AGREEMENT THE IRONWORKERS CLAIM JURISDICTION, AMONG OTHER THINGS, OVER THE MOVING, HOISTING, LOWERING AND PLACING ON FOUNDATIONS OF MACHINERY. MOREOVER, THE SCHEDULE ATTACHED TO THE AGREEMENT SETTING OUT WAGE RATES PROVIDES A RATE FOR A CLASSIFICATION DESIGNATED AS "MACHINERY MOVER".



9. THE COLLECTIVE AGREEMENT BETWEEN THE MILLWRIGHTS AND THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO WHICH IS BINDING UPON THE COMPLAINANT BY VIRTUE OF A MEMORANDUM OF AGREEMENT CONTAINS A SECTION ENTITLED "TRADE JURISDICTION". WHILE THIS SECTION DOES NOT APPEAR TO FORM A PART OF THE AGREEMENT ITSELF, IT DEFINES THE TERM MILLWRIGHT AND MACHINERY ERECTOR AS MEANING A PERSON WHO DOES UNLOADING, HOISTING, INSTALLING AND ADJUSTING OF MACHINES USED FOR MANUFACTURING PURPOSES. WE WOULD POINT OUT THAT WHILE THE JURISDICTION CLAIMED BY THE MILLWRIGHTS AND IRONWORKERS BEARS CONSIDERABLE SIMILARITY, IN THE INSTANT CASE, THERE ARE NO CONFLICTING CLAIMS BEING MADE BY THE TWO UNIONS. AS WAS MENTIONED EARLIER, THE COMPLAINANT IS EMPLOYING MIXED CREWS OF MILLWRIGHTS AND IRONWORKERS TO DO THE WORK IN DISPUTE.

10. THE COLLECTIVE AGREEMENT BETWEEN THE PLUMBERS AND THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO OF WHICH THE COMPLAINANT IS A MEMBER CONTAINS A SCHEDULE ENTITLED "JURISDICTION OF WORK" WHICH IS INCLUDED IN THE AGREEMENT FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT APPARENT FROM A PERUSAL OF THE SCHEDULE THAT THE PLUMBERS CLAIM TO HAVE JURISDICTION FOR THE HANDLING OR ERECTING OF TANKS OF THE TYPE WITH WHICH WE ARE HERE CONCERNED. THE BOARD, OF COURSE, DID NOT HAVE THE BENEFIT OF REPRESENTATIONS FROM THE PLUMBERS AS TO THEIR JURISDICTION. THE PLUMBERS, HOWEVER, CLEARLY ASSERT JURISDICTION FOR ALL TYPES OF PIPING.

11. THERE WAS ALSO FILED WITH THE BOARD BY COUNSEL FOR THE IRONWORKERS A COPY OF A MEMORANDUM OF UNDERSTANDING DATED DECEMBER 10TH, 1953, WHICH PURPORTS TO BE EXECUTED BY AUTHORIZED OFFICERS OF THE RESPONDENT IRONWORKERS' LOCAL 721 AND THE RESPONDENT PLUMBERS' LOCAL 46. THE MEMORANDUM IN PART PROVIDES THAT THE OPERATION OF UNLOADING AND HANDLING OF EQUIPMENT (PUMPS, COMPRESSORS, EXCHANGES, COMPLETED TANKS AND OTHER SIMILAR EQUIPMENT) WHETHER TO POINT OF INSTALLATION OR STOCKPILE, IS THE WORK OF THE IRONWORKERS. THE MEMORANDUM PROVIDES HOWEVER, THAT THE FINAL ACT OF INSTALLATION IS THE WORK OF PLUMBERS. COUNSEL FOR THE IRONWORKERS SUBMITS THAT THE WORDS "FINAL ACT OF INSTALLATION" HAS REFERENCE ONLY TO THE ATTACHMENT OF THE PIPING TO THE EQUIPMENT AFTER IT HAS BEEN INSTALLED, LEVELLED AND ANCHORED.

12. THE EVIDENCE OF JAMES PHILLIPS, THE PRESIDENT OF THE COMPLAINANT IS THAT THE COMPANY HAS DONE THE SAME TYPE OF WORK THAT IS NOW IN DISPUTE A NUMBER OF TIMES OVER THE PAST FIFTEEN YEARS AND THAT ON ALL OCCASIONS THE WORK HAS BEEN PERFORMED BY IRONWORKERS AND MILLWRIGHTS. HE TESTIFIED MOREOVER, THAT ON NONE OF THE PREVIOUS OCCASIONS DID THE PLUMBERS EVER CLAIM TO HAVE JURISDICTION FOR THIS WORK. THE EVIDENCE OF ARTHUR MCISAACS, THE BUSINESS MANAGER OF THE IRONWORKERS, LOCAL 721, IS THAT IN HIS EXPERIENCE DATING BACK TO 1950, IRONWORKERS AND MILLWRIGHTS HAVE ALWAYS UNLOADED, INSTALLED AND ANCHORED THE TYPE OF EQUIPMENT HERE IN QUESTION. HE FURTHER TESTIFIED THAT THE SAME TWO TRADES REGULARLY DO THE SAME WORK WITH RESPECT TO ALL TYPES OF TANKS, PUMPS, COMPRESSORS AND SIMILAR EQUIPMENT, REGARDLESS OF WHETHER THE WORK IS DONE BY MANUAL OR POWER TOOLS.

13. TAKING INTO ACCOUNT THE RESPECTIVE WORK JURISDICTION CLAIMED BY THE THREE RESPONDENT UNIONS, THE UNDERSTANDING THAT APPEARS TO HAVE BEEN REACHED BETWEEN THE IRONWORKERS AND PLUMBERS AS SET OUT IN THE 1953 MEMORANDUM AND PARTICULARLY THE LONG STANDING HISTORY AND PRACTICE OF IRONWORKERS AND MILLWRIGHTS DOING THE TYPE OF WORK IN DISPUTE, WE FIND THAT

WORKERS AND MILLWRIGHTS DOING THE TYPE OF WORK IN DISPUTE, WE FIND THAT THE WORK OF MOVING THE PROCESSING EQUIPMENT BEING INSTALLED BY THE COMPLAINANT IN THE PLANT OF WARNER-LAMBERT CANADA LIMITED LOCATED ON EGLINTON AVENUE EAST IN METROPOLITAN TORONTO, THE PLACING OF IT IN POSITION, AND THE INSTALLATION AND ANCHORING OF THE EQUIPMENT (BUT NOT THE ATTACHMENT OF THE PIPING) IS WORK THAT CLEARLY FALLS WITHIN THE JURISDICTION OF THE IRONWORKERS AND MILLWRIGHTS.

14. THE DIRECTION OF THE BOARD ACCORDINGLY IS THAT THE COMPLAINANT CONTINUE TO ASSIGN THE WORK OF MOVING, PLACING, LEVELLING AND ANCHORING THE PROCESSING TANKS BEING INSTALLED BY THE COMPLAINANT IN THE PLANT OF WARNER-LAMBERT CANADA LIMITED AT 2200 EGLINTON AVENUE EAST IN METROPOLITAN TORONTO TO MEMBERS OF THE IRONWORKERS AND CARPENTERS UNIONS WITH WHOM THE COMPLAINANT HAS A COLLECTIVE BARGAINING RELATIONSHIP.

13057-67-JD UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL # 46 (COMPLAINANT) V. CLEMENT & BELLMORE CONSTRUCTION LIMITED AND INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL # 183, AND LOCAL # 506 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: L. C. ARNOLD, W. HOWARD AND J. TECKNOS FOR THE COMPLAINANT, E. J. CLEMENTS AND J. W. HOLMES FOR THE RESPONDENT COMPANY, R. KOSKIE AND M. J. REILLY FOR THE RESPONDENT UNIONS.

DECISION OF THE BOARD: MAY 5, 1967.

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2. THE COMPLAINANT IN ITS COMPLAINT HAS REQUESTED THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO THE ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

3. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

THE WORK OF LAYING NON-METALLIC SANITARY AND STORM SEWERS FROM THE BUILDINGS TO THE PROPERTY LINE OF THE NORTHERN ELECTRIC COMPANY LIMITED ON ITS PREMISES AT BRAMPTON, WHICH IS THE SITE OF THE CONSTRUCTION PROJECT UPON WHICH THE RESPONDENT COMPANY IS ENGAGED, SHALL BE PERFORMED BY LABOURERS IN ACCORDANCE WITH THE PROVISIONS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN LOCAL # 506 OF THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA AND THE RESPONDENT COMPANY.

THIS ORDER SHALL BECOME EFFECTIVE AS OF THIS DATE AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

13140-67-JD FRANKI CANADA LIMITED (COMPLAINANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 183 TORONTO AND THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506, MICHAEL J. REILLY AND ED. LINESS (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: G. W. HATELY AND W. E. LARDNER FOR THE COMPLAINANT, S.L. ROBINS, Q.C., FOR THE RESPONDENTS, T. E. ARMSTRONG, W. STEFANOVITCH AND W. MORRIS FOR THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY, FRANK E. ARMSTRONG FOR CANADIAN ASSOCIATION OF FOUNDATION SPECIALISTS.

DECISION OF THE BOARD: MAY 26, 1967.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 66 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH REGARD TO THE WORK ASSIGNMENT IN DISPUTE.

2. THE BOARD AT THE HEARING IN THIS MATTER ON MAY 25TH, 1967 CONSULTED WITH THE INTERESTED PARTIES AND HAS CONSIDERED THEIR REPRESENTATIONS. IN ALL THE CIRCUMSTANCES THE BOARD DEEMS IT ADVISABLE TO MAKE THE FOLLOWING INTERIM ORDER:

THE COMPLAINANT SHALL ASSIGN THE INSTALLATION OF CAISSONS AND THE UNDERPINNING WORK BEING DONE IN CONNECTION WITH THE CONSTRUCTION OF A BUILDING ON A SITE AT 18 KING STREET EAST IN THE CITY OF TORONTO TO MEMBERS OF BOTH LOCAL 506 AND LOCAL 183 OF THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA IN THE SAME RATIO AS MEMBERS OF LOCAL 506 AND LOCAL 183 WERE PERFORMING THE SAID WORK AS OF MAY 12TH, 1967. THE WORK THAT WAS BEING PERFORMED AS OF THAT DATE RELATING TO THE INSTALLATION OF SAISSONS AND UNDERPINNING AT THE SAME SITE BY MEMBERS OF OTHER CONSTRUCTION TRADES SHALL CONTINUE TO BE PERFORMED BY MEMBERS OF THOSE TRADES.

THIS ORDER IS EFFECTIVE AS OF THIS DATE AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12319-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA (APPLICANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND J. E. C. ROBINSON.

DECISION OF THE BOARD: MAY 10, 1967.

1. THE APPLICANT, BY LETTER DATED MAY 9TH, 1967, HAS REQUESTED THE BOARD TO DELAY THE TAKING OF THE REPRESENTATION VOTE WHICH WAS DIRECTED BY THE BOARD IN THIS MATTER ON APRIL 26TH, 1967. THE GROUNDS FOR THE APPLICANT'S REQUEST ARE THAT THE VOTERS' LIST OF EMPLOYEES AS OF APRIL 26TH, 1967 CONTAINS ONLY 30 NAMES, WHEREAS ON OCTOBER 11TH, 1966, THE DATE OF THE MAKING OF THIS APPLICATION, THE RESPONDENT CLAIMED THAT THERE WERE 108 PERSONS INCLUDED ON THE LIST OF EMPLOYEES. THE APPLICANT ALLEGED THAT IT IS UNABLE TO ASCERTAIN WHEN THE LAID OFF EMPLOYEES WILL BE RECALLED BY THE RESPONDENT AND IS OF OPINION THAT A VOTE OF THE EMPLOYEES PRESENTLY EMPLOYED BY THE RESPONDENT WOULD NOT REFLECT THE TRUE WISHES OF THE 108 EMPLOYEES WHO WERE EMPLOYED ON THE DATE THE APPLICATION WAS MADE.

2. EVEN IF THE APPLICANT WERE TO ESTABLISH THE FACTS WHICH IT HAS ALLEGED, THE BOARD IS OF OPINION THAT THERE WOULD BE NO JUSTIFICATION IN DELAYING THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER. IT IS NOT UNCOMMON FOR THE VOTERS' LIST TO BE SUBSTANTIALLY DIFFERENT FROM THE LIST OF EMPLOYEES AT THE TIME THE APPLICATION WAS MADE, EITHER BY REASON OF LAY-OFFS HAVING OCCURRED DURING THE INTERVENING PERIOD OR BY REASON OF ADDITIONAL PERSONS BEING EMPLOYED, ESPECIALLY WHERE SUCH AN EXTENDED PERIOD OF TIME HAS ELAPSED BETWEEN THE MAKING OF THE APPLICATION AND THE TAKING OF THE VOTE AS IN THE INSTANT CASE. SO LONG AS IT IS NOT ESTABLISHED THAT THE RESPONDENT HAS DELIBERATELY CAUSED A CHANGE IN THE NUMBER OF PERSONS CONCERNED IN THE INTERVENING PERIOD IN ORDER TO MATERIALLY AFFECT THE OUTCOME OF THE REPRESENTATION VOTE, THERE IS NO REASON TO CAUSE THE BOARD TO AMEND ITS DECISION OF APRIL 26TH, 1967, IN THIS MATTER. IN ADDITION, THE BOARD IS OF OPINION THAT THE CHANGE IN THE NUMBER OF EMPLOYEES AS SET OUT ABOVE WOULD NOT, OF ITSELF, PREVENT THE EMPLOYEES FROM REFLECTING THEIR TRUE WISHES IN A REPRESENTATION VOTE.

3. THE REQUEST OF THE APPLICANT IS ACCORDINGLY DENIED.

DECISION OF THE BOARD: MAY 18, 1967.

1. THE APPLICANT, BY ITS LETTER DATED MAY 17TH, 1967, HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MAY 10TH, 1967 IN THIS MATTER.

2. SINCE THE APPLICANT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO IT WHICH WAS NOT AVAILABLE PRIOR TO THE BOARD'S DECISION OF MAY 10TH, 1967, AND SINCE THE BOARD CONSIDERED ALL THE MATTERS RAISED BY THE APPLICANT IN ITS LETTER DATED MAY 17TH, 1967, PRIOR TO REACHING ITS DECISION OF MAY 10TH, 1967, THE BOARD DOES NOT THEREFORE CONSIDER IT ADVISABLE TO RECONSIDER ITS DECISION OF MAY 10TH, 1967, IN THIS MATTER. THE REQUEST OF THE APPLICANT IS ACCORDINGLY DENIED.



12923-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JONES & LAUGHLIN MINING COMPANY, LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND J. E. C. ROBINSON.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER  
O. HODGES: MAY 30, 1967.

1. THE OBJECTORS BY LETTER DATED MAY 18TH, 1967, AND THE RESPONDENT BY WRITTEN SUBMISSIONS DATED MAY 19TH, 1967, HAVE REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MAY 8TH, 1967 IN THIS MATTER.
2. NEITHER PARTY HAS ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER AND ALL THE ARGUMENTS MADE IN THE LETTER AND SUBMISSIONS ABOVE REFERRED TO WERE MADE OR COULD HAVE BEEN MADE AT THE HEARING.
3. THE RESPONDENT TAKES THE POSITION THAT MR. MORTSON (THE SUPERVISOR OF MR. WAGNER WHO WAS THE SPOKESMAN FOR THE OBJECTORS) WAS MERELY EXPRESSING AN OPINION CONCERNING THE UNION WHICH WAS PERMISSIBLE PURSUANT TO THE PROVISIONS OF SECTION 48 OF THE LABOUR RELATIONS ACT. HOWEVER, WE ARE NOT SATISFIED THAT WHERE A MEMBER OF MANAGEMENT SINGLES OUT EMPLOYEES AND MAKES INQUIRIES CONCERNING UNION ACTIVITIES AND SUBSEQUENTLY REACTS TO THE INFORMATION OBTAINED IN SUCH A WAY AS TO CAUSE THE EMPLOYEES TO APPROACH HIM IN A BODY IN THE MANNER IN WHICH THEY DID IN THE CIRCUMSTANCES OF THIS CASE, AND WHERE THE MEMBER OF MANAGEMENT EXPRESSES HIMSELF IN THE WAY THAT HE DID IN THIS CASE, HE CANNOT BE SAID TO HAVE MERELY EXPRESSED AN OPINION. AS INDICATED IN OUR DECISION OF MAY 8TH, 1967, WE FIND THAT WHAT MR. MORTSON DID MUST BE CONSTRUED AS UNDUE INFLUENCE.
4. IN ADDITION, THE REASON THAT THE BOARD DID NOT PERMIT THE APPLICANT TO ASK MR. WAGNER WHETHER HE WAS IN FACT INFLUENCED BY WHAT MR. MORTSON SAID TO HIM WAS THAT THE BOARD COULD NOT MAKE A DETERMINATION OF UNDUE INFLUENCE ON THE SUBJECTIVE TESTIMONY OF MR. WAGNER BUT MUST MAKE SUCH DETERMINATION ON THE OBJECTIVE FACTS OF THIS CASE. WE ASSUMED THAT MR. WAGNER WOULD TESTIFY THAT HE WAS NOT UNDULY INFLUENCED BY MR. MORTSON. UNDUE INFLUENCE CAN BE OF SUCH A SUBTLE NATURE THAT THE PERSON BEING INFLUENCED DOES NOT REALIZE THAT HE HAS BEEN INFLUENCED. THIS PRINCIPLE IS RECOGNIZED IN THE MERCHANDISING FIELD BY THE PROPONENTS OF THE "SOFT SELL".
5. IN THE INSTANT CASE, WHILE THERE WAS NO EVIDENCE OF COERCION, INTIMIDATION, THREATS OR PROMISES, THERE WAS OBJECTIVE EVIDENCE FROM WHICH THE BOARD COULD AND DID FIND UNDUE INFLUENCE WHICH TOOK THE VIEWS EXPRESSED BY MR. MORTSON OUTSIDE THE PERMISSIVE PROVISIONS OF SECTION 48 OF THE ACT.
6. SINCE THE RESPONDENT AND THE OBJECTORS HAVE NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO THEM WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER, AND SINCE THE PARTIES HAD FULL OPPORTUNITY AT THE HEARING

TO MAKE ALL THE ARGUMENTS NOW MADE BY THEM, AND SINCE THE BOARD CONSIDERED ALL THE ISSUES RAISED BY THE RESPONDENT AND THE OBJECTORS PRIOR TO REACHING ITS DECISION DATED MAY 8TH, 1967, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF MAY 8TH, 1967 IN THIS MATTER. THE REQUESTS OF THE RESPONDENT AND THE OBJECTORS ARE ACCORDINGLY DENIED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: MAY 30, 1967.

I DO NOT IN ANY WAY DEROGATE FROM MY DISSENT OF MAY 8TH, 1967 IN THIS MATTER. I CONCUR ONLY WITH THAT PORTION OF THE MAJORITY DECISION AS SET OUT IN PARAGRAPH NUMBER 6 THEREOF.

12941-67-R: LOCAL UNION 326, METRO, TORONTO, ONTARIO, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. BREWERS' WAREHOUSING COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

DECISION OF THE BOARD: MAY 29, 1967.

1. THE APPLICANT HAS REQUESTED RECONSIDERATION OF THE BOARD'S DECISION IN THIS MATTER, DATED APRIL 19TH, 1967, IN WHICH A REPRESENTATION VOTE WAS ORDERED.

2. THE APPLICANT HAS NOT REFERRED TO ANY EVIDENCE OR ARGUMENT WHICH WOULD NOT HAVE BEEN AVAILABLE TO IT AT THE TIME OF THE HEARING. INDEED, THE MATTER WAS FULLY ARGUED AT THAT TIME. THE APPLICANT'S REQUEST IS ACCORDINGLY DENIED.

3. IN VIEW OF THE ARGUMENT RAISED BY THE APPLICANT, WE WOULD MAKE REFERENCE TO THE MINIT CAR WASH AND GARAGE LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1960. P. 351, IN WHICH THE BOARD STATED:-

ANY FINANCIAL ASSISTANCE THAT THE EMPLOYER MAY HAVE GIVEN TO THE EMPLOYEE, WHO APPEARED ON BEHALF OF THE OBJECTORS TO THE CERTIFICATION OF THE APPLICANT, WAS GIVEN AFTER THE "PETITION" WAS FORMULATED AND SIGNED BY THE EMPLOYEES AND HAD BEEN SUBMITTED TO THE BOARD. IN THE ABSENCE OF ANY OTHER EVIDENCE OF EMPLOYER PARTICIPATION IN THE "PETITION", IT IS OUR OPINION THAT SUCH ASSISTANCE AS WAS GIVEN CANNOT AFFECT THE WEIGHT OF THE EVIDENCE AS TO THE DESIRES OF THE EMPLOYEES WHO SIGNED THE "PETITION". - -

4. THE MATTER IS REFERRED TO THE REGISTRAR PURSUANT TO THE DIRECTION CONTAINED IN PARAGRAPH 4 OF THE BOARD'S EARLIER ENDORSEMENT.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

13091-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) v. ELLIS-DON LIMITED (RESPONDENT).

5. IN RECENT CASES, THE BOARD HAS EXPANDED AREA #6 TO INCLUDE THE WHOLE OF THE COUNTY OF WATERLOO. THE BOARD THEREFORE FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WATERLOO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(MAY 30, 1967).

13103-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
LOCAL 498 BRANTFORD (APPLICANT) v. DUFFERIN MATERIALS & CONSTRUCTION LTD.  
(RESPONDENT).

4. THE APPLICANT HAS REQUESTED A HEARING ON THE SOLE GROUND THAT THE BOARD SHOULD CONDUCT HEARINGS IN ALL APPLICATIONS FOR CERTIFICATION. HOWEVER, IT IS CLEAR FROM SECTION 75(9A) OF THE LABOUR RELATIONS ACT THAT THE BOARD IS NOT REQUIRED TO HOLD A HEARING ON AN APPLICATION SUCH AS IS NOW BEFORE US. WHILE THE BOARD DOES HOLD HEARINGS IN A PROPER CASE (AND SEE SECTION 73 OF THE BOARD'S RULES OF PROCEDURE), ON THE BASIS OF THE MATERIALS AND EVIDENCE BEFORE US WE DO NOT DEEM IT NECESSARY TO HOLD ONE IN THIS CASE. THE BOARD NOTES THAT UNDER THE PROVISIONS OF SECTION 79(1) OF THE ACT IT IS ALWAYS OPEN TO PARTIES TO PROCEEDINGS, IF THEY BELIEVE THE BOARD HAS ERRED IN ANY WAY, TO REQUEST A RECONSIDERATION OF A DECISION.

(MAY 23, 1967).

13115-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L.  
(APPLICANT) v. D'ANGELO PLASTERING CO. LTD. (DOMENICO D'ANGELO) (RESPONDENT).

6. ALTHOUGH THE APPLICANT HAS REQUESTED AN "ALL EMPLOYEE" UNIT, FOR THE REASONS SET OUT IN WINTER & SONS CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1967, P. 889, THE BOARD PROPOSES TO RESTRICT THE UNIT IN THE SAME WAY AS IT DID IN THE WINTER & SONS CASE. ACCORDINGLY, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS PLASTERING OPERATIONS IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(MAY 24, 1967).

13116-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1,  
N.C.C.L. (APPLICANT) V. YGL CONSTRUCTION LTD. (YVAN ST. GELAIS)  
(RESPONDENT).

6. ALTHOUGH THE APPLICANT HAS REQUESTED AN "ALL EMPLOYEE" UNIT, FOR THE REASONS SET OUT IN WINTER & SONS CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1967, P. 889, THE BOARD PROPOSES TO RESTRICT THE UNIT IN THE SAME WAY AS IT DID IN THE WINTER & SONS CASE. ACCORDINGLY, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS LATHING OPERATIONS IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(MAY 24, 1967).

13152-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT)  
V. DINSMORE CONSTRUCTION LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

6. THE RESPONDENT PROPOSES THAT THE GEOGRAPHIC AREA DEFINED IN THE BARGAINING UNIT BE RESTRICTED TO THE PARTICULAR GOVERNMENT ROAD CONTRACT UNDER WHICH IT IS OPERATING. IN EFFECT, THEREFORE, THE RESPONDENT IS PROPOSING A PROJECT CERTIFICATION. THIS IS FORBIDDEN BY SECTION 92(1) OF THE LABOUR RELATIONS ACT. WE SEE NO REASON FOR DEPARTING FROM THE AREA NORMALLY GRANTED BY THE BOARD, THAT IS THE ONE PROPOSED BY THE APPLICANT.

(MAY 31, 1967).

#### ADDENDUM

THE FOLLOWING APPLICATION WAS INADVERTENTLY OMITTED FROM THE OCTOBER 1965 MONTHLY REPORT.

10646-65-R: RAE GOARD AND DRIVER EMPLOYEES OF K. J. BEAMISH CONSTRUCTION  
Co. LIMITED (APPLICANTS) V. TEAMSTERS LOCAL UNION NO. 230, READY-MIX,  
BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS,  
I.B. OF T.C.W. & H. OF A. (RESPONDENT) V. K. J. BEAMISH CONSTRUCTION Co.  
(INTERVENER).

#### REASONS FOR DECISION

OF

L. A. MACLEAN, DEPUTY VICE-CHAIRMAN,  
AND BOARD MEMBER D. McDERMOTT

THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS PURSUANT TO THE PROVISIONS OF SECTION 96(1) OF THE LABOUR RELATIONS ACT.



THE RESPONDENT, A TRADE UNION PERTAINING TO THE CONSTRUCTION INDUSTRY, WAS CERTIFIED ON DECEMBER 14TH, 1964, FOR A BARGAINING UNIT OF THE INTERVENER'S EMPLOYEES. FOLLOWING CERTIFICATION, CONCILIATION SERVICES WERE APPLIED FOR AND A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER ON APRIL 23RD, 1965. AT THE TIME OF THE MAKING OF THIS APPLICATION AND OF THE HEARING, HEREIN, THE MATTER WAS STILL PENDING BEFORE THE CONCILIATION OFFICER WHO HAD LAST MET WITH THE PARTIES ON OR ABOUT JULY 12TH.

IT IS OBJECTED ON BEHALF OF THE RESPONDENT UNION THAT THE BOARD IS WITHOUT JURISDICTION TO ENTERTAIN AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS UNDER THE PROVISIONS OF SECTION 96(1) OF THE ACT UNTIL THE EXPIRATION OF THIRTY DAYS FOLLOWING THE EXHAUSTION OF CONCILIATION PROCEEDINGS AS PROVIDED IN SUBSECTION (A) OR (B) OF SECTION 46 OF THE ACT. IT IS THE CONTENTION OF THE RESPONDENT, THEREFORE, THAT THE PRESENT APPLICATION IS PREMATURE AND MUST BE DISMISSED.

THE PRINCIPAL SECTIONS OF THE LABOUR RELATIONS ACT WHICH ARE PERTINENT TO OUR CONSIDERATION OF THE TIMELINESS OF THIS APPLICATION ARE AS FOLLOWS:-

- 46.-(1) WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND NOTICE HAS BEEN GIVEN UNDER SECTION 11 AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR, NO APPLICATION FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE.
- (A) UNLESS A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (B) UNLESS THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.
91. WHERE THERE IS CONFLICT BETWEEN ANY PROVISION IN SECTIONS 92 TO 96 AND ANY PROVISION IN SECTIONS 5 TO 89, THE PROVISIONS IN SECTIONS 92 TO 96 PREVAIL.
- 96.-(1) IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN SIX MONTHS AFTER ITS CERTIFICATION,

ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

- (2) NOTWITHSTANDING SUBSECTION 2 OF SECTION 43, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN A FIRST AGREEMENT BETWEEN AN EMPLOYER AND A TRADE UNION, WHERE THE TRADE UNION HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT OF THE EMPLOYEES OF THE EMPLOYER IN THE BARGAINING UNIT, MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AFTER THE 305TH DAY OF ITS OPERATION AND BEFORE THE 365TH DAY OF ITS OPERATION.
- (3) SUBSECTIONS 3 TO 7 OF SECTION 43 APPLY TO AN APPLICATION UNDER SUBSECTION 1 OR 2.

(EMPHASIS ADDED).

COUNSEL FOR THE APPLICANTS ARGUES THAT THE PROVISIONS OF SECTION 46(1) (A) AND (B) ARE IN DIRECT CONFLICT WITH SECTION 96 AND THAT, THEREFORE, BY VIRTUE OF SECTION 91, THEY HAVE NO APPLICATION TO THE TERMINATION OF BARGAINING RIGHTS UNDER THE SECTIONS OF THE ACT PERTAINING TO THE CONSTRUCTION INDUSTRY. QUITE CORRECTLY, HE POINTS OUT THAT IT WAS THE PARTICULAR NATURE OF THE CONSTRUCTION INDUSTRY AND THE KIND OF EMPLOYMENT RELATIONSHIPS WHICH CUSTOMARILY PREVAIL IN THE INDUSTRY, THAT PROMPTED THE LEGISLATURE TO ENACT THE SPECIAL AND SEPARATE PROVISIONS CONTAINED IN SECTIONS 90 TO 96. THESE PROVISIONS, OF COURSE, WERE DESIGNED TO FACILITATE AND EXPEDITE THE PROCESSES OF CERTIFICATION, COLLECTIVE BARGAINING AND THE TERMINATION OF BARGAINING RIGHTS IN THE CONSTRUCTION INDUSTRY. IT IS HIS POSITION, THAT WHEN SECTION 96 IS VIEWED IN THE CONTEXT OF THE LEGISLATIVE POLICY INHERENT IN THE SECTIONS PERTAINING TO THE CONSTRUCTION INDUSTRY, THAT SECTION MUST BE INTERPRETED AS COMPLETELY EXHAUSTIVE OF THE CONDITIONS FOR BRINGING APPLICATIONS FOR THE TERMINATION OF BARGAINING RIGHTS BY EMPLOYEES. ON THIS BASIS, AS HE ARGUES, SECTION 46(1) (A) AND (B) CANNOT BE CONSTRUED AS IMPOSING ANY QUALIFICATION ON THE LITERAL TERMS OF OPERATION OF SECTION 96(1). HE ARGUES THAT IT WOULD BE INCONSISTENT WITH THE LANGUAGE AND OBJECTIVES OF THE SECTIONS PERTAINING TO THE CONSTRUCTION INDUSTRY TO HOLD, WITHOUT PLAIN AND EXPRESS WORDS TO THAT EFFECT, THAT THE LEGISLATURE INTENDED SECTION 46(1) (A) OR (B) TO APPLY TO APPLICATIONS FOR TERMINATION OF BARGAINING RIGHTS UNDER SECTION 96(1).

IT IS CLEAR THAT THE TIME PROVISIONS IN THE ACT REGULATING APPLICATIONS FOR CERTIFICATION, NOTICES TO BARGAIN, BARGAINING, CONCILIATION, TERMS OF COLLECTIVE AGREEMENTS, AND THE TERMINATION OF BARGAINING RIGHTS ETC., HAVE AS THEIR PRIME OBJECTIVE THE PROMOTION OF CONDITIONS CONDUCIVE

TO THE MAINTENANCE OF GOOD INDUSTRIAL RELATIONS. CONSISTENT WITH THE PROMOTION OF THIS OBJECTIVE, THE ACT, AMONG OTHER THINGS, SEEKS TO STABILIZE CONDITIONS REQUISITE TO MEANINGFUL AND EFFECTIVE COLLECTIVE BARGAINING FOR WHAT THE LEGISLATURE HAS CONSIDERED A REASONABLE PERIOD FOLLOWING THE ATTAINMENT BY THE UNION OF ITS RIGHTS TO REPRESENT AND TO BARGAIN FOR EMPLOYEES IN A BARGAINING UNIT. ON THE ONE HAND, THE TIME PROVISIONS SEEK TO PROMOTE THE INCEPTION AND DEVELOPMENT OF AN EFFECTIVE COLLECTIVE BARGAINING RELATIONSHIP, AND ON THE OTHER TO MAINTAIN AND IMPROVE THAT RELATIONSHIP. THE LEGISLATIVE POLICY INHERENT IN THESE OBJECTIVES REFLECTS THE REALIZATION THAT MEANINGFUL COLLECTIVE BARGAINING CANNOT COMMENCE OR ENDURE WHEN THERE IS AN ISSUE OUTSTANDING WHICH MAY AFFECT THE UNION'S RIGHT OF REPRESENTATION.

IT IS SELF-EVIDENT, OF COURSE, THAT NO SERIOUS COLLECTIVE BARGAINING AT THE CONCILIATION STAGE LEVEL WOULD LIKELY OCCUR OR BE MAINTAINED IF THE CONCILIATION PROCEEDINGS AND THE BARGAINING RIGHTS OF THE UNION WERE AT ANY TIME OPEN TO ATTACK BY DISSIDENT EMPLOYEES IN AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS. THERE CAN BE NO DOUBT THAT THE PROVISIONS OF SUBSECTIONS (1) (A) AND (1) (B) OF SECTION 46, WHICH DEFER THE INSTITUTION OF TERMINATION APPLICATIONS PENDING THE EXPIRATION OF THIRTY DAYS FROM THE EXHAUSTION OF THE CONCILIATION PROCESS, WERE ENACTED AS PART OF THE SAME GENERAL POLICY TO PROMOTE EFFECTIVE COLLECTIVE BARGAINING. THE FACT THAT A STRIKE OR LOCKOUT IS ALLOWED FOLLOWING SEVEN DAYS FROM THE EXHAUSTION OF THE CONCILIATION PROCESS IS ALSO, NO DOUBT, PART OF THE SAME LEGISLATIVE POLICY DESIGNED TO INDUCE AND PERSUADE THE PARTIES TO RESOLVE THEIR DIFFERENCES IN COLLECTIVE BARGAINING. IT NEED HARDLY BE OBSERVED THAT THE RIGHT TO STRIKE OR LOCKOUT, OR THE THREATENED ASSERTION OF THOSE RIGHTS FORMS A PROMINENT AND EFFECTIVE ROLE IN THE COLLECTIVE BARGAINING PROCESS. IT IS APPARENT, THEREFORE, THAT THE TIME PROVISIONS OF SECTION 46(1) (A) AND (B) WERE ENACTED TO ENSURE THAT THE CONCILIATION PROCESS, ONCE INSTITUTED, WOULD PROCEED TO COMPLETION AND THAT THE PARTIES WOULD HAVE AN ADDITIONAL PERIOD THEREAFTER TO ASSERT THEIR RIGHTS TO STRIKE OR LOCKOUT AND TO RESOLVE THEIR DIFFERENCES IN FURTHER COLLECTIVE BARGAINING WITHOUT THE INTERFERENCE OF AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS.

IT IS A FIRST PRINCIPLE IN ANY INQUIRY INTO THE MEANING OF AN ENACTMENT THAT

A STATUTE IS THE WILL OF THE LEGISLATURE, AND THE FUNDAMENTAL RULE OF INTERPRETATION, TO WHICH ALL OTHERS ARE SUBORDINATE, IS THAT A STATUTE IS TO BE EXPOUNDED "ACCORDING TO THE INTENT OF THEM THAT MADE IT" . . . THE OBJECT OF ALL INTERPRETATION OF A STATUTE IS TO DETERMINE WHAT INTENTION IS CONVEYED, EITHER EXPRESSLY OR IMPLIEDLY, BY THE LANGUAGE USED, SO FAR AS IS NECESSARY FOR DETERMINING WHETHER THE PARTICULAR CASE OR STATE OF FACT PRESENTED TO THE INTERPRETER FALLS WITHIN IT . . . (MAXWELL ON INTERPRETATION OF STATUTES 9TH ED. PP. 1-2)

THERE ARE ALSO CERTAIN IMPORTANT QUALIFICATIONS TO THE RULE OF STRICT INTERPRETATION,

THE RULE OF STRICT CONSTRUCTION, HOWEVER, WHENEVER INVOKED, COMES ATTENDED WITH QUALIFICATIONS AND OTHER RULES NO LESS IMPORTANT, AND IT IS BY THE LIGHT WHICH EACH CONTRIBUTES THAT THE MEANING MUST BE DETERMINED. AMONG THEM IS THE RULE THAT THE SENSE OF THE WORDS IS TO BE ADOPTED WHICH BEST HARMONISES WITH THE CONTEXT AND PROMOTES IN THE FULLEST MANNER THE POLICY AND OBJECT OF THE LEGISLATURE. THE PARAMOUNT OBJECT IN CONSTRUING PENAL AS WELL AS OTHER STATUTES, IS TO ASCERTAIN THE LEGISLATIVE INTENT, AND THE RULE OF STRICT CONSTRUCTION IS NOT VIOLATED BY PERMITTING THE WORDS TO HAVE THEIR FULL MEANING, OR THE MORE EXTENSIVE OF TWO MEANINGS, WHEN BEST EFFECTUATING THE INTENTION. THEY ARE, INDEED, FREQUENTLY TAKEN IN THE WIDEST SENSE, SOMETIMES<sup>1</sup> EVEN IN A SENSE MORE WIDE THAN ETYMOLOGICALLY BELONGS OR IS POPULARLY ATTACHED TO THEM, IN ORDER TO CARRY OUT EFFECTUALLY THE LEGISLATIVE INTENT, OR, TO USE LORD COKE'S WORDS, TO SUPPRESS THE MISCHIEF AND ADVANCE THE REMEDY. (MAXWELL, IBID PP. 279-280.)

IT IS SAID TO BE THE DUTY OF THE JUDGE TO MAKE SUCH CONSTRUCTION OF A STATUTE AS SHALL SUPPRESS THE MISCHIEF AND ADVANCE THE REMEDY. EVEN WHERE THE USUAL MEANING OF THE LANGUAGE FALLS SHORT OF THE WHOLE OBJECT OF THE LEGISLATURE, A MORE EXTENDED MEANING MAY BE ATTRIBUTED TO THE WORDS, IF THEY ARE FAIRLY SUSCEPTIBLE OF IT . . . (MAXWELL, IBID PP. 70-71.)

SECTION 10 OF THE INTERPRETATION ACT, R.S.O. c. 191, STATES THAT,

EVERY ACT SHALL BE DEEMED TO BE REMEDIAL, WHETHER ITS IMMEDIATE PURPORT IS TO DIRECT THE DOING OF ANYTHING THAT THE LEGISLATURE DEEMS TO BE FOR THE PUBLIC GOOD OR TO PREVENT OR PUNISH THE DOING OF ANY THING THAT IT DEEMS TO BE CONTRARY TO THE PUBLIC GOOD, AND SHALL ACCORDINGLY RECEIVE SUCH FAIR, LARGE AND LIBERAL CONSTRUCTION AND INTERPRETATION AS WILL BEST ENSURE THE ATTAINMENT OF THE OBJECT OF THE ACT ACCORDING TO ITS TRUE INTENT, MEANING AND SPIRIT. R.S.O. 1950, c. 184, s. 10.



WHERE THE LANGUAGE OF AN ENACTMENT IS OPEN TO MORE THAN ONE MEANING, THE CONSEQUENCE OF ONE INTERPRETATION AS OPPOSED TO ANOTHER OFTEN POINT TO THE MEANING INTENDED BY THE LEGISLATURE:-

BEFORE ADOPTING ANY PROPOSED CONSTRUCTION OF A PASSAGE SUSCEPTIBLE OF MORE THAN ONE MEANING, IT IS IMPORTANT TO CONSIDER THE EFFECTS OR CONSEQUENCES WHICH WOULD RESULT FROM IT, FOR THEY OFTEN POINT OUT THE REAL MEANING OF THE WORDS. THERE ARE CERTAIN OBJECTS WHICH THE LEGISLATURE IS PRESUMED NOT TO INTEND, AND A CONSTRUCTION WHICH WOULD LEAD TO ANY OF THEM IS THEREFORE TO BE AVOIDED. IT IS NOT INFREQUENTLY NECESSARY, THEREFORE, TO LIMIT THE EFFECT OF THE WORDS CONTAINED IN AN ENACTMENT (ESPECIALLY GENERAL WORDS), AND SOMETIMES TO DEPART, NOT ONLY FROM THEIR PRIMARY AND LITERAL MEANING, BUT ALSO FROM THE RULES OF GRAMMATICAL CONSTRUCTION IN CASES WHERE IT SEEMS HIGHLY IMPROBABLE THAT THE WORDS IN THEIR WIDE PRIMARY OR GRAMMATICAL MEANING ACTUALLY EXPRESS THE REAL INTENTION OF THE LEGISLATURE. IT IS REGARDED AS MORE REASONABLE TO HOLD THAT THE LEGISLATURE EXPRESSED ITS INTENTION IN A SLOVENLY MANNER, THAN THAT A MEANING SHOULD BE GIVEN TO THEM WHICH COULD NOT HAVE BEEN INTENDED. (MAXWELL IBID P. 85.)

IT IS A RUDIMENTARY PRINCIPLE OF STATUTORY CONSTRUCTION THAT A SECTION OF A STATUTE SHOULD IF POSSIBLE, BE CONSTRUED SO THAT THERE WILL BE NO REPUGNANCY OR INCONSISTENCY BETWEEN ITS DIFFERENT PORTIONS OR WITH THE MANIFEST AIMS AND OBJECTS OF THE ENACTMENT. EVERY SECTION OF A STATUTE MUST BE VIEWED IN CONTEXT AND IN CONNECTION WITH THE ACT AS A WHOLE, SO AS TO MAKE, IF PRACTICABLE, ALL THE SECTIONS HARMONISE AND GIVE A SENSIBLE AND REASONABLE EFFECT TO EACH. IT IS NOT TO BE PRESUMED THAT THE LEGISLATURE INTENDED ANY PART OF A STATUTE TO BE INCONSISTENT WITH OTHER PARTS OR THAT WHAT IT HAS GIVEN WITH ONE HAND IT HAS TAKEN AWAY WITH ANOTHER. (SEE E.G. MAXWELL, IBID, PP. 20-23, 30, 55, 70-71, 85, 163; MONTREAL LIGHT ETC. CO. V. MONTREAL, [1924] 2 D.L.R. 605; HALSBURY'S LAWS OF ENGLAND, 3RD, ED. VOL. 36 P. 395, PARA. 594).

IT IS APPARENT THAT THE INTERPRETATION WHICH WE ARE URGED TO PLACE UPON SECTION 96(1) BY COUNSEL FOR THE APPLICANTS IS NOT ONLY MANIFESTLY REPUGNANT TO THE SPIRIT AND POLICY OF THE LEGISLATION AS EXPRESSED IN THE TIME PROVISIONS OF SUBSECTION (1) (A) AND (B) OF SECTION 46 AND THE OTHER SECTIONS OF THE ACT MENTIONED AS DEALING WITH THE PROMOTION AND MAINTENANCE OF MEANINGFUL COLLECTIVE BARGAINING, BUT IS PLAINLY IN CONFLICT WITH THE SECTIONS IN THE ACT, INCLUDING SECTION 93, WHICH REGULATE THE TIMES FOR THE INSTITUTION AND CONTINUANCE OF CONCILIATION

SERVICES. THE LEGISLATURE HAS, IN UNQUALIFIED TERMS PROVIDED UNDER SECTION 93 OF THE ACT, THAT THE RIGHT TO CONCILIATION SERVICES AS DESCRIBED IN THAT SECTION SHALL BE AVAILABLE TO LABOUR RELATIONS IN THE CONSTRUCTION INDUSTRY. SUBSECTIONS (2) AND (5) OF SECTION 93 SET OUT THE TIMES WITHIN WHICH THE CONCILIATION OFFICER AND CONCILIATION BOARD MUST REPORT. IN OUR VIEW, THESE PROVISIONS CAN ONLY IMPLY THAT, IF THE CONCILIATION OFFICER OR BOARD MUST REPORT WITHIN A CERTAIN NUMBER OF DAYS, THE LEGISLATURE INTENDED THAT THEIR JURISDICTION AND POWER TO DEAL WITH THE DISPUTE AND TO REPORT WOULD SUBSIST AND NOT BE WITHDRAWN FROM THEM AND THAT THE PARTIES WOULD NOT BE DEPRIVED OF THE BENEFIT OF THEIR SERVICES BY AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS INSTITUTED DURING THAT PRESCRIBED STATUTORY PERIOD. IT IS MATERIAL IN THIS RESPECT TO REFER TO THE PRINCIPLE OF INTERPRETATION, STATED BY VISCOUNT SIMON L. C. IN NOKES V. DONCASTER AMALGAMATED COLLIERIES LTD., [1940] A.C. 1014, 1022:-

- - IF THE CHOICE IS BETWEEN TWO INTERPRETATIONS THE NARROWER OF WHICH WOULD FAIL TO ACHIEVE THE MANIFEST PURPOSE OF THE LEGISLATION, WE SHOULD AVOID A CONSTRUCTION WHICH WOULD REDUCE THE LEGISLATION TO FUTILITY AND SHOULD RATHER ACCEPT THE BOLDER CONSTRUCTION BASED ON THE VIEW THAT PARLIAMENT WOULD LEGISLATE ONLY FOR THE PURPOSE OF BRINGING ABOUT AN EFFECTIVE RESULT. - -

SECTION 96 PROVIDES THAT IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITHIN SIX MONTHS AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES MAY APPLY FOR A DECLARATION THAT THE UNION NO LONGER REPRESENTS THE EMPLOYEES. IT IS SIGNIFICANT THAT SECTION 91 DOES NOT SAY THAT SECTIONS 5 TO 89 SHALL NOT APPLY TO THE CONSTRUCTION INDUSTRY BUT DECLARES MERELY THAT WHERE THERE IS A CONFLICT BETWEEN ANY PROVISIONS IN SECTIONS 92 TO 96 AND ANY PROVISIONS IN SECTIONS 5 TO 89 THE PROVISIONS IN SECTIONS 92 TO 96 SHALL PREVAIL. THE PLAIN MEANING TO BE DRAWN FROM THE LANGUAGE OF SECTION 91, THEREFORE, IS THAT WHERE THERE IS A CONFLICT IN ANY OF THE PROVISIONS OF SECTION 5 TO 89 WITH ANY OF THE PROVISIONS OF SECTIONS 92 TO 96, THE FORMER SECTIONS, LESS WHATEVER PARTS OF THEM CONFLICT WITH THE LATTER, SHALL, IF REASONABLY CAPABLE OF PERTAINING TO THE SUBJECT-MATTER, APPLY MUTATUS MUTANDIS TO THE CONSTRUCTION INDUSTRY.

SECTION 46(1) PROVIDES THAT WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND NOTICE HAS BEEN GIVEN UNDER SECTION 11 AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR MEDIATOR, NO APPLICATION FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE UNLESS THE CONCILIATION PROCESS HAS BEEN EXHAUSTED AND THE ADDITIONAL PERIOD OF THIRTY DAYS HAS GONE BY AS PROVIDED FOR IN EITHER CLAUSE (A) OR (B) OF THE SECTION. OBVIOUSLY, THE ONLY PROVISION OF SECTION 46(1) WHICH APPEARS TO CONFLICT WITH SECTION 96 IS THE ONE YEAR PERIOD. SECTION 91, HOWEVER, STATES THAT WHERE THERE IS SUCH A CONFLICT THE PROVISIONS OF SECTION 96 ARE TO

PREVAIL. IT IS MANIFEST THAT IF THE PERIOD OF SIX MONTHS PROVIDED FOR IN SECTION 96(1) IS, FOLLOWING THE DIRECTION OF SECTION 91, ALLOWED TO PREVAIL AND IS, ACCORDINGLY, SUBSTITUTED IN SECTION 46(1) FOR THE ONE YEAR PERIOD STATED THEREIN, ANY CONFLICT EXISTING BETWEEN SECTIONS 96(1) AND 46(1) (A) AND (B) IS AUTOMATICALLY RECONCILED, WITH THE RESULT THAT THE TWO SECTIONS MAY THEN CO-EXIST AND OPERATE IN HARMONY.

IN FAVOUR OF THE RESTRICTIVE INTERPRETATION, HOWEVER, IT IS ARGUED THAT AS THE SECTION IS COINED IN ABSOLUTE AND UNQUALIFIED TERMS, ANY APPLICATION OF THE QUALIFYING PROVISIOES OF SECTION 46(1) (A) OR (B) TO SECTION 96(1) MUST OF NECESSITY BE CONSTRUED AS CREATING THE KIND OF CONFLICT ENVISAGED BY SECTION 91. IN THIS RESPECT, IT IS CONTENDED THAT IF THE LEGISLATURE HAD INTENDED THE QUALIFYING PROVISIOES OF SECTION 46(1) TO LIMIT THE OPERATION OF SECTION 96 IT WOULD HAVE ADDED SOME EXPRESS STATEMENT TO THAT EFFECT. IT IS SUBMITTED, THEREFORE, THAT SINCE THE ACT IS SILENT WITH RESPECT TO SECTION 96(1) BEING SUBJECT TO THE TIME PROVISIONS OF SECTION 46(1), AND AS THE OPERATION OF THESE PROVISIONS WOULD, AS IT IS ARGUED, GIVE RISE TO A CONFLICT BETWEEN THE SECTIONS IN QUESTION, IT MUST BE CONCLUDED THAT THE LEGISLATURE INTENDED SECTION 96(1) TO OPERATE INDEPENDENTLY OF SECTION 46(1). IF THIS ARGUMENT IS SOUND THEN, OF COURSE, IT FOLLOWS AS AN INESCAPABLE COROLLARY OF THE REASONING INHERENT IN IT, THAT SECTION 96 CONSTITUTES AN EXHAUSTIVE DECLARATION OF THE TIMES WHEN, AND THE PERSONS WHO MAY BRING AN APPLICATION FOR THE TERMINATION OF BARGAINING RIGHTS OF A UNION SUBJECT TO THE SECTIONS OF THE ACT PERTAINING TO THE CONSTRUCTION INDUSTRY. IT IS OBVIOUS, OF COURSE, THAT SECTION 96 DOES NOT PROVIDE FOR APPLICATIONS FOR TERMINATION OF BARGAINING RIGHTS BY EMPLOYERS. FURTHER, THE SECTION CONTAINS NO PROVISION WHATEVER FOR THE TERMINATION OF BARGAINING RIGHTS, AT THE INSTANCE OF EITHER EMPLOYEES OR EMPLOYERS, AS DOES SECTION 45, FOR FAILURE ON THE PART OF THE UNION POSSESSING THOSE RIGHTS TO GIVE NOTICE TO BARGAIN OR TO BARGAIN AFTER GIVING SUCH NOTICE. IT MUST FOLLOW THEREFORE, THAT IF SECTION 96 IS EXHAUSTIVE OF THE REMEDIES TO TERMINATE BARGAINING RIGHTS OF UNIONS SUBJECT TO THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THEN EMPLOYERS DO NOT HAVE ANY RIGHT WHATEVER UNDER THE ACT TO APPLY TO TERMINATE THE BARGAINING RIGHTS OF SUCH UNIONS NOR, INDEED, ARE THE BARGAINING RIGHTS OF SUCH UNIONS VULNERABLE TO TERMINATION, AT THE INSTANCE OF EMPLOYEES OR EMPLOYERS, BECAUSE THEY FAIL TO GIVE NOTICE TO BARGAIN OR FAIL TO BARGAIN AFTER GIVING SUCH NOTICE. IN OTHER WORDS, UNDER THE CONSTRUCTION OF THE ACT ADVOCATED BY COUNSEL FOR THE APPLICANTS, THE UNION'S BARGAINING RIGHTS CANNOT BE TERMINATED SAVE BY THE APPLICATION OF AN EMPLOYEE WITHIN THE FRAMEWORK OF, AND COMPLYING WITH THE STRICT LITERAL CONDITIONS IMPOSED BY SECTION 96. THE INCONGRUOUS CONSEQUENCES OF SUCH AN INTERPRETATION ARE TOO APPARENT TO REQUIRE ELABORATION. IT IS OBVIOUSLY MORE COMPATIBLE WITH LEGISLATIVE CONSISTENCY AND WITH THE POLICY AND SENSE OF THE LEGISLATION WHEN READ AS A WHOLE, THAT SECTIONS 45 AND 46 WERE INTENDED TO COMPLEMENT AND NOT TO CONFLICT WITH SECTION 96. IT IS OBVIOUS THAT THE PROVISIONS OF SECTIONS 91, 93, 96, AND 46, READILY LEND THEMSELVES TO AN INTERPRETATION WHICH ON THE ONE HAND PERMITS THEM TO CO-EXIST IN HARMONY AND ON THE OTHER MANIFESTLY SERVES TO PROMOTE AND ADVANCE THE PLAIN SPIRIT AND OBJECT OF THE LEGISLATION AS A WHOLE.

AS AN ALTERNATIVE POSITION IN FAVOUR OF THE INAPPLICABILITY OF SECTION 46(1) (A) TO THE FACTS OF THE INSTANT CASE, IT WAS SUGGESTED THAT CONFLICT COULD BE AVOIDED AND HARMONY ACHIEVED IF SECTION 46(1) WERE CONSTRUED TO APPLY TO APPLICATIONS UNDER SECTION 96 ONLY AFTER THE EXPIRATION OF ONE YEAR. THIS WOULD MEAN, OF COURSE, THAT IF THE UNION WAS SUCCESSFUL IN FORESTALLING AN APPLICATION FOR TERMINATION OF ITS BARGAINING RIGHTS FOR ONE YEAR UNDER SECTION 96, IT COULD THEN STAND TO GAIN A FURTHER PERIOD OF THIRTY DAYS OR MORE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46(1) (A) OR (B). WHILE, ON THE BASIS OF THE APPLICANTS' REASONING RELATING TO THE EXISTENCE OF AN IRRECONCILABLE CONFLICT BETWEEN THE TWO SECTIONS, WE ARE UNABLE TO APPRECIATE HOW THIS ALTERNATIVE ARGUMENT WOULD AVERT THE SAME KIND OF CONFLICT, IT IS PLAIN THAT SUCH AN INTERPRETATION WOULD LEAD TO A RESULT WHICH WOULD BORDER ON ABSURDITY. NEEDLESS TO SAY, FOLLOWING THE BASIC RULES OF STATUTORY CONSTRUCTION AND COMMON SENSE, THE BOARD OUGHT TO BE DISINCLINED TO PLACE SUCH A CONSTRUCTION ON THE SECTION UNLESS THE LANGUAGE IS SO CLEAR AND COMPELLING THAT SUCH A CONSTRUCTION IS INEVITABLE.

IN OUR OPINION, THE RESTRICTIVE, AND WHAT WE ARE IMPELLED TO REGARD AS THE BARREN TECHNICAL AND EXTREMELY NARROW-GAUGED INTERPRETATION OF SECTION 96, ADVOCATED BY THE APPLICANTS, COULD ONLY BE SUSTAINED, IF AT ALL, BY AMPUTATING SECTION 96 FROM ITS CONTEXT AND CONSTRUING IT IN COMPLETE ISOLATION FROM THE OTHER SECTIONS OF THE LABOUR RELATIONS ACT. IN ACCORDANCE WITH FUNDAMENTAL CANONS OF STATUTORY INTERPRETATION, HOWEVER, THE MEANING AND SCOPE TO BE ASCRIBED TO THE SECTION MUST BE DEDUCED BY A CONSIDERATION OF THE SECTION IN ITS PROPER JUXTAPOSITION WITH THE OTHER SECTIONS OF THE ACT AND WITH THE POLICY AND OBJECTS OF THE LEGISLATIONS AS A WHOLE. THE MANIFEST POLICY OF THE LEGISLATURE, AS EXPRESSED IN SECTION 46(1) (A) AND (B) OF THE ACT, IS THAT APPLICATIONS FOR TERMINATION OF BARGAINING RIGHTS BROUGHT UNDER THE NON-CONSTRUCTION INDUSTRY SECTIONS OF THE ACT ARE NOT TO BE BROUGHT SO AS TO DISTURB OR DEFEAT THE COMPLETION OF THE CONCILIATION PROCESS OR THE RIGHT TO STRIKE OR LOCK-OUT. IN THE CIRCUMSTANCES, WE ARE UNABLE TO ACCEDE TO THE INTERPRETATION THAT THE LEGISLATURE INTENDED TO DEROGATE FROM THIS POLICY IN APPLICATIONS FOR TERMINATION OF BARGAINING RIGHTS UNDER SECTION 96.

IN OUR OPINION, THE MOST TENABLE AND REASONABLE CONSTRUCTION TO BE PLACED ON THE SECTIONS IN QUESTION CONSONANT WITH THE LANGUAGE AND OBJECTS OF THE LEGISLATION AS A WHOLE AND WITH THE OBVIOUS INTENTION OF THE LEGISLATURE IS THAT THE TIME PROVISIONS OF CLAUSES (A) AND (B) OF SECTION 46(1) APPLY TO APPLICATIONS UNDER SECTION 96.

IN THE RESULT, THIS APPLICATION IS UNTIMELY AND IS DISMISSED.

(OCTOBER 28TH, 1965.)



REASONS FOR DECISION  
OF  
BOARD MEMBER H. F. IRWIN.

I DISSENT.

THIS IS AN APPLICATION UNDER SECTION 96(1) OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT TRADE UNION FOR ALL EMPLOYEES OF THE INTERVENER COVERED IN A CERTIFICATION CERTIFICATE ISSUED BY THIS BOARD ON DECEMBER 14TH, 1964.

SECTION 96 OF THE ACT READS AS FOLLOWS:

96-(1) IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN SIX MONTHS AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

(2) NOTWITHSTANDING SUBSECTION 2 OF SECTION 43, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN A FIRST AGREEMENT BETWEEN AN EMPLOYER AND A TRADE UNION, WHERE THE TRADE UNION HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT OF THE EMPLOYEES OF THE EMPLOYER IN THE BARGAINING UNIT, MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AFTER THE 305TH DAY OF ITS OPERATION AND BEFORE THE 365TH DAY OF ITS OPERATION.

(3) SUBSECTIONS 3 TO 7 OF SECTION 43 APPLY TO AN APPLICATION UNDER SUBSECTION 1 OR 2. 1961-62, c. 68, s. 16, PART.

AT THE HEARING IT WAS AGREED BETWEEN THE PARTIES THAT NO COLLECTIVE AGREEMENT HAD BEEN ENTERED INTO BETWEEN THE RESPONDENT UNION AND THE INTERVENER AND THAT OVER SIX MONTHS HAD ELAPSED SINCE THE DATE OF CERTIFICATION, DECEMBER 14TH, 1964. CONCILIATION SERVICES WERE APPLIED FOR AND ON APRIL 23RD, 1965, THE MINISTER APPOINTED A CONCILIATION OFFICER TO MEET WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT.

COUNSEL FOR THE RESPONDENT STATED THAT THE APPLICATION WAS UNTIMELY BECAUSE THE CONCILIATION PROCEEDINGS HAD NOT BEEN COMPLETED AS REQUIRED UNDER THE PROVISIONS OF SECTION 46(1) OF THE ACT. THIS SECTION READS AS FOLLOWS:

46-(1) WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND NOTICE HAD BEEN GIVEN UNDER

SECTION 11 AND THE BOARD HAS GRANTED A REQUEST FOR CONCILIATION SERVICES, NO APPLICATION FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE,

- (A) UNLESS A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (B) UNLESS THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. R.S.O. 1960, c. 202, s. 46(1); 1964, c. 53, s. 6(1).

COUNSEL ARGUED THAT SINCE THERE IS A CONFLICT BETWEEN THE PROVISIONS OF SECTION 46(1) AND SECTION 96(1) OF THE ACT, UNDER THE PROVISIONS OF SECTION 91 OF THE ACT, THE PROVISIONS OF SECTION 96 MUST PREVAIL AND SECTION 46(1) IS ACCORDINGLY MODIFIED SO AS TO READ "SIX MONTHS" INSTEAD OF "ONE YEAR". WITH THIS MODIFICATION AND THE FACT THAT CONCILIATION PROCEEDINGS HAVE NOT BEEN COMPLETED, HE SUBMITS THAT THE PROVISIONS OF SECTION 46(1) MAKE THE PRESENT APPLICATION UNTIMELY.

WITH RESPECT, I AM UNABLE TO ACCEPT THIS ARGUMENT. SECTION 91 OF THE ACT DOES NOT AUTHORIZE THE AMENDMENT OF SECTION 46(1) WHEN IT CONFLICTS WITH SECTION 96(1); IT SIMPLY STATES THAT "THE PROVISIONS IN....  
....SECTION(S).....96 PREVAIL." TO INTERPRET SECTION 96 OTHERWISE WOULD BE TO ASSUME THAT THE LEGISLATURE FAILED BY OVERSIGHT TO ENACT SECTION 46(1) AS PART OF SECTION 96. IT GOES ALTOGETHER TOO FAR FOR THIS BOARD TO FURTHER ASSUME THAT IF THE LEGISLATURE WERE NOW TO CONSIDER THE PROBLEM, THE TWELVE MONTH PERIOD WOULD BE REDUCED TO SIX MONTHS BUT THE 30 DAY PERIODS AND THE BALANCE OF THE SUBSECTION WOULD REMAIN AS IS. THIS LINE OF REASONING HAS BEEN DEALT WITH MANY YEARS AGO BY THE HOUSE OF LORDS:

"I DO NOT THINK IT IS COMPETENT TO ANY COURT TO PROCEED UPON THE ASSUMPTION THAT THE LEGISLATURE HAS MADE A MISTAKE. WHATEVER THE REAL FACT MAY BE, I THINK A COURT OF LAW IS BOUND TO PROCEED UPON THE ASSUMPTION THAT THE LEGISLATURE IS AN IDEAL PERSON THAT DOES NOT MAKE MISTAKES. IT MUST BE ASSUMED THAT IT HAS INTENDED WHAT IT HAS SAID, AND I THINK ANY OTHER VIEW OF THE MODE IN WHICH ONE MUST APPROACH THE INTERPRETATION OF A STATUTE, WOULD GIVE AUTHORITY FOR AN INTERPRETATION OF THE

LANGUAGE OF AN ACT OF PARLIAMENT, WHICH WOULD BE ATTENDED WITH THE MOST SERIOUS CONSEQUENCES": COMMRs. FOR SPECIAL PURPOSES OF INCOME TAX V. PEMSEL, (1891) A.C. 531, AT P. 549, 61 L.J.Q.B. 265, AT P. 273, PER LORD HALSBURY, L.C., QUOTED (IN PART) IN SMITH V. LONDON (1909), 20 O.L.R. 133, AT 162.

THE RESPONDENT TRADE UNION HAS BEEN RECOGNIZED BY THIS BOARD TO BE A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY. THEREFORE, THE APPLICANTS ARE FREE TO MAKE AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS UNDER SECTION 96(1) OF THE ACT. SECTION 96(1) ONLY STIPULATES ONE CONDITION AND THAT IS THAT SIX MONTHS MUST HAVE ELAPSED AFTER THE DATE THE UNION WAS CERTIFIED AS BARGAINING AGENT. SUCH TIME HAS ELAPSED IN THE INSTANT CASE AND THE APPLICATION IS THEREFORE TIMELY.

THE MAJORITY DECISION, HOWEVER, HAS HELD THAT SECTION 46(1) DOES APPLY TO THE CONSTRUCTION INDUSTRY AND THAT UNDER THE PROVISIONS OF SECTION 91 OF THE ACT THE WORDS "ONE YEAR" MUST BE REPLACED BY THE WORDS "SIX MONTHS".

SECTION 91 OF THE ACT READS AS FOLLOWS:

91. WHERE THERE IS CONFLICT BETWEEN ANY PROVISION IN SECTIONS 92 TO 96 AND ANY PROVISION IN SECTIONS 5 TO 89, THE PROVISIONS IN SECTIONS 92 TO 96 PREVAIL. 1961-62, c. 68, s. 16, PART.

WITH RESPECT, I CONSIDER THAT THE INTERPRETATION IN THE MAJORITY DECISION IGNORES COMPLETELY THE PLAIN AND UNAMBIGUOUS WORDING OF SECTION 96. IN EFFECT, IT REWRITES SECTION 96. IT IS NOT THE FUNCTION OF THIS BOARD TO REWRITE THE LABOUR RELATIONS ACT, BUT ONLY TO INTERPRET AND ADMINISTER ITS PROVISIONS AS WRITTEN. IF IT HAD BEEN THE INTENTION OF THE LEGISLATURE TO REQUIRE THAT CONCILIATION PROCEEDINGS, ONCE GRANTED, MUST BE COMPLETED BEFORE AN APPLICATION WOULD BE TIMELY UNDER SECTION 96(1), THIS REQUIREMENT WOULD HAVE BEEN PROVIDED FOR IN SECTION 92 TO 96. THIS PRINCIPLE IS CLEARLY ENUNCIATED BY LORD WATSON IN THE CASE OF SALOMON VS. SALOMON & Co. (1897) A.C. 22, AT P. 38.

"INTENTION OF THE LEGISLATURE" IS A COMMON BUT VERY SLIPPERY PHRASE, WHICH POPULARLY UNDERSTOOD, MAY SIGNIFY ANYTHING FROM INTENTION EMBODIED IN POSITIVE ENACTMENT TO SPECULATIVE OPINION AS TO WHAT THE LEGISLATURE PROBABLY WOULD HAVE MEANT, ALTHOUGH THERE HAS BEEN AN OMISSION TO ENACT IT. IN A COURT OF LAW OR EQUITY, WHAT THE LEGISLATURE INTENDED TO BE DONE OR NOT TO BE

DONE CAN ONLY BE LEGITIMATELY ASCERTAINED FROM THAT WHICH IT HAS CHOSEN TO ENACT, EITHER IN EXPRESS WORDS OR BY REASONABLE AND NECESSARY IMPLICATION.

MY VIEW IS FURTHER STRENGTHENED BY THE FOLLOWING QUOTATION FROM THE JUDGMENT OF SCHROEDER, J., AS HE THEN WAS, IN RE NOBLE AND WOLF, (1948) 4 D.L.R. 123 AT P. 139, (1948) O.R. 579 AT 597:

WHATEVER VIEW I MAY ENTERTAIN, BASED UPON MY CONCEPTION OF JUSTICE, MORALITY OR CONVENIENCE, I MUST ALWAYS HAVE PRESENT TO MY MIND THE PROPER CONCEPTION OF THE JUDICIAL FUNCTION, NAMELY, TO EXPOUND AND INTERPRET THE LAW AND NOT TO CREATE THE LAW BASED ON MY INDIVIDUAL NOTION OR OPINION OF WHAT THE LAW OUGHT TO BE.

IT IS IMPORTANT TO NOTE THAT SECTION 91 DOES NOT PROVIDE THAT WHERE THERE IS CONFLICT BETWEEN ANY PROVISION IN SECTIONS 92 TO 96 AND ANY PROVISIONS IN SECTION 5 TO 89, THE CONFLICTING PROVISIONS IN SECTION 5 TO 89 SHALL BE AMENDED MUTATIS MUTANDIS. ON THE CONTRARY, SECTION 91 PROVIDES THAT IN THE EVENT OF SUCH A CONFLICT, THE CONFLICTING PROVISION OR PROVISIONS IN SECTIONS 5 TO 89 SHALL BE DISREGARDED AND THE BOARD SHALL DETERMINE THE MATTER BEFORE IT BY REFERENCE SOLELY TO THOSE PROVISIONS IN SECTIONS 92 TO 96 WHICH GOVERN THE FACTS OF THE PARTICULAR CASE. NOTHING ELSEWHERE IN THE ACT IS TO BE ALLOWED TO INTERFERE WITH IMPLEMENTING THE SPECIAL PROVISIONS APPLICABLE TO THE CONSTRUCTION INDUSTRY. THIS CONCLUSION IS SUPPORTED BY ALL THE PRINCIPLES OF STATUTORY INTERPRETATION ADOPTED OVER THE CENTURIES BY THE COURTS.

UNDER THE LABOUR RELATIONS ACT THE UNION IS REFERRED TO AS THE BARGAINING AGENT. IN REALITY, THE UNION IS MERELY THE "HIRED MAN". THE EMPLOYEES ARE THE REAL BOSS. THE TERM "BARGAINING AGENT" IS EMPLOYED ADVISEDLY. THE EMPLOYEES ARE THE PRINCIPALS AND THE UNION IS THE AGENT. THE STATUE SIMPLY PROVIDES THE MACHINERY FOR TERMINATION OF THE AGENCY BY THE PRINCIPALS. IT IS THE EMPLOYEES' PEROGATIVE TO ENGAGE OR DISMISS A UNION AS THEIR BARGAINING AGENT AT WILL UNDER THE PROCEDURES AND AT THE TIMES SPECIFIED IN THE ACT. THIS STATUTORY RIGHT OF THE EMPLOYEES MUST BE ZEALOUSLY GUARDED AT ALL TIMES.

FOR ALL THESE REASONS, I WOULD HAVE RE-LISTED THE CASE FOR HEARING FOR THE PURPOSE OF ENQUIRING INTO THE EVIDENCE FILED BY THE APPLICANTS AS REQUIRED UNDER SECTION 43(3) OF THE ACT.

(OCTOBER 28TH, 1965.).



STATISTICAL TABLES FOR MAY 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	MAY 1ST 1967	2 MONTHS OF FISCAL YEAR 1967-68	1966-67
I. CERTIFICATION	94	178	164
II. DECLARATION TERMINATING BARGAINING RIGHTS	12	20	15
III. DECLARATION OF SUCCESSOR STATUS	-	-	2
IV. DECLARATION THAT STRIKE UNLAWFUL	6	9	4
V. DECLARATION THAT LOCK-OUT UNLAWFUL	3	3	-
VI. CONSENT TO PROSECUTE	10	26	27
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	11	17	19
VIII. MISCELLANEOUS	<u>6</u>	<u>8</u>	<u>8</u>
TOTAL	<u>142</u>	<u>261</u>	<u>239</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	MAY 1ST 1967	2 MONTHS OF FISCAL YEAR 1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	89	180	129

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY MAJOR TYPES

	NUMBER DISPOSED OF		
	MAY 1ST 1967	2 MONTHS OF FISCAL YEAR 1967-68	1966-67
I. CERTIFICATION	73	164	162
II. DECLARATION TERMINATING BARGAINING RIGHTS	6	10	8
III. DECLARATION OF SUCCESSOR STATUS	-	1	2
IV. DECLARATION THAT STRIKE UNLAWFUL	5	9	4
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	1	-
VI. CONSENT TO PROSECUTE	5	10	18
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	34	19
VIII. MISCELLANEOUS	<u>9</u>	<u>15</u>	<u>8</u>
TOTAL	<u>116</u>	<u>244</u>	<u>221</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>MAY 1ST 2 MTHS FISCAL YR.</u>			<u>MAY 1ST 2 MTHS FISCAL YR.</u>		
	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
<u>I. CERTIFICATION</u>						
GRANTED	50	124	112	1970	3985	2619
DISMISSED	18	30	29	603	1895	1389
WITHDRAWN	<u>5</u>	<u>10</u>	<u>18</u>	<u>195</u>	<u>267</u>	<u>370</u>
TOTAL	<u>73</u>	<u>164</u>	<u>159</u>	<u>2768</u>	<u>6147</u>	<u>4378</u>
<u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	3	6	5	42	123	251
DISMISSED	3	4	3	32	38	91
WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	<u>6</u>	<u>10</u>	<u>8</u>	<u>74</u>	<u>161</u>	<u>342</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTAL FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>MAY 1ST 2 MONTHS OF FISCAL YEAR</u>		
		<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	2	2	-
	WITHDRAWN	<u>3</u>	<u>7</u>	<u>4</u>
	TOTAL	<u><u>5</u></u>	<u><u>9</u></u>	<u><u>4</u></u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	-	-
	WITHDRAWN	<u>1</u>	<u>1</u>	<u>-</u>
	TOTAL	<u><u>1</u></u>	<u><u>1</u></u>	<u><u>-</u></u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	1	1	3
	DISMISSED	-	-	-
	WITHDRAWN	<u>4</u>	<u>9</u>	<u>15</u>
	TOTAL	<u><u>5</u></u>	<u><u>10</u></u>	<u><u>18</u></u>



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MAY 1ST 2 MONTHS OF FISCAL YEAR 1967	1967-68	1966-67
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	1	4
POST-HEARING VOTE	6	12	8
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	2	1
POST-HEARING VOTE	2	5	11
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>9</u>	<u>20</u>	<u>24</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MAY 1ST 2 MONTHS OF FISCAL YEAR 1967	1967-68	1966-67
*RESPONDENT UNION SUCCESSFUL	-	1	-
RESPONDENT UNION UNSUCCESSFUL	-	3	3
TOTAL	<u>-</u>	<u>4</u>	<u>3</u>

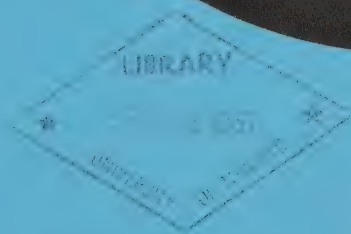
\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

JUNE 1967



ONTARIO

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**ONTARIO LABOUR RELATIONS BOARD**



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1967

BARGAINING AGENTS CERTIFIED DURING JUNE

NO VOTE CONDUCTED

12775-66-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. SEVEN UP ONTARIO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, KITCHENER AND WELLAND, SAVE AND EXCEPT FOREMEN AND ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND ROUTE SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12859-66-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE COUNTY OF ELGIN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS JAIL AT ST. THOMAS, SAVE AND EXCEPT SERGEANT, PERSONS ABOVE THE RANK OF SERGEANT, AND SECRETARY TO THE GOVERNOR." (8 EMPLOYEES IN THE UNIT).

12908-66-R: NURSES' ASSOCIATION WATERLOO COUNTY HEALTH UNIT (APPLICANT) V. BOARD OF HEALTH, WATERLOO COUNTY HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT ASSISTANT SUPERVISOR AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR." (12 EMPLOYEES IN THE UNIT).

12914-66-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. DAVIDSON RUBBER COMPANY INCORPORATED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT HOPE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (170 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 258 ).

12924-67-R: BRAMPTON TYPOGRAPHICAL UNION LOCAL 987 (I.T.U.) (APPLICANT; V. THE DAILY TIMES & CONSERVATOR (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN COMPOSING ROOM WORK AT BRAMPTON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

12948-67-R: NURSES' ASSOCIATION SUDBURY AND DISTRICT HEALTH UNIT (APPLICANT) V. BOARD OF HEALTH, SUDBURY AND DISTRICT HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT ASSISTANT DIRECTOR AND PERSONS ABOVE THE RANK OF ASSISTANT DIRECTOR." (30 EMPLOYEES IN THE UNIT).

12952-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF HAMILTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT, OFFICE STAFF, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 959, AND THE RESPONDENT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, TEACHERS AIDS, ORTHOPAEDIC ASSISTANTS AND CAFETERIA SUPERVISORS." (265 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT COOKS AND COOKS' ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.

13042-67-R: LOCAL UNION NO. 500 CANADIAN UNION OF GENERAL EMPLOYEES OF THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. TORONTO YOUNG MEN'S CHRISTIAN ASSOCIATION, CENTRAL BRANCH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT PROFESSIONAL STAFF, DEPARTMENT MANAGERS, ASSISTANT DEPARTMENT MANAGERS, PHYSICAL INSTRUCTORS, GRADUATE DIETITIANS, STUDENT DIETITIANS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A CERTIFICATE ISSUED TO THE APPLICANT FOR CERTAIN EMPLOYEES OF THE RESPONDENT DATED DECEMBER 20TH, 1966." (60 EMPLOYEES IN THE UNIT).

13049-67-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (APPLICANT) V. BARRIE DISTRICT COLLEGIATE BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CUSTODIANS, CLEANERS AND CARETAKERS EMPLOYED IN THE MAINTENANCE AND SERVICE OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT CHIEF CUSTODIANS, MAINTENANCE SUPERVISORS, PERSONS ABOVE THE RANK OF CHIEF CUSTODIAN AND MAINTENANCE SUPERVISOR, OFFICE EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13052-67-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. THE BREITHAUP LEATHER COMPANY LIMITED (RESPONDENT) V. BOOT AND SHOE WORKERS' UNION AFFILIATED WITH C.L.C. A.F. OF L. C.I.O. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CAMPBELLFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF."  
(22 EMPLOYEES IN THE UNIT).

13055-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAGERSVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF."  
(208 EMPLOYEES IN THE UNIT).

13071-67-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 267, RED ROCK, ONTARIO (APPLICANT) V. DOMTAR NEWSPRINT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS RED ROCK INN AND ITS BAYVIEW RESIDENCE LOCATED IN THE IMPROVEMENT DISTRICT OF RED ROCK, DISTRICT OF THUNDER BAY, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (21 EMPLOYEES IN THE UNIT).

13087-67-R: LONDON COMMERCIAL AND PAPER BOX WORKERS' UNION No. 510 (APPLICANT) V. H. J. JONES-SONS LTD. (RESPONDENT) V. INTERNATIONAL BRO. OF BOOKBINDERS, LOCAL #226 (INTERVENER).

UNIT: "ALL PRESSMEN, ASSISTANT PRESSMEN AND THEIR APPRENTICES EMPLOYED IN THE LETTERPRESS PRESSROOM OF THE RESPONDENT'S PLANT IN LONDON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13097-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TECK PIONEER RESIDENCE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOME FOR THE AGED IN THE TOWNSHIP OF TECK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDER-GRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, OCCUPATIONAL THERAPISTS, PHYSIOTHERAPISTS, AND OFFICE STAFF." (29 EMPLOYEES IN THE UNIT).

13102-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADIAN COLLORD PRODUCTS LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (22 EMPLOYEES IN THE UNIT).

13120-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1988 (APPLICANT) V. W. R. JUSTUS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13129-67-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879 (APPLICANT) V. BUNTIN, GILLIES & COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSES IN HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (27 EMPLOYEES IN THE UNIT).

13136-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. C & M PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (111 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT MAINTENANCE MEN, SERVICE MEN, AND TRUCK DRIVERS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

13137-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (APPLICANT) V. MAITLAND MANOR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MAITLAND MANOR IN GODERICH, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETICIANS, UNDERGRADUATE DIETICIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING SUMMER VACATIONS." (21 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, . RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

13143-67-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. CARL SMALL MOTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

13144-67-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. GUELPH MOTOR PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF."  
(30 EMPLOYEES IN THE UNIT).

13145-67-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. WELLINGTON MOTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND SALESMEN."  
(8 EMPLOYEES IN THE UNIT).

13146-67-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. MANNING MOTOR CAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND SALESMEN."  
(10 EMPLOYEES IN THE UNIT).

13147-67-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. MULLER BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

13148-67-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. B & R MOTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF."  
(12 EMPLOYEES IN THE UNIT).

13153-67-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 162 (APPLICANT) V. CANADIAN BECHTEL LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL #493 (INTERVENER).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

13154-67-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS (APPLICANT) V. LAKESIDE JERSEY DAIRY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LEAMINGTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF."  
(15 EMPLOYEES IN THE UNIT).

13159-67-R: LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BEACHELL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13160-67-R: BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL 33 OWEN SOUND (APPLICANT) V. ABLE MASONRY (KITCHENER) LTD. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

13164-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BEAMSVILLE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

13171-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 837 (APPLICANT) V. ATLAS PIPELINE CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

13172-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 837 (APPLICANT) V. A. TITIAN PIPELINE CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

13173-67-R: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. NOVO AUTOMOTIVE PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL #704 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

13180-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944 (APPLICANT) V. THE PYRAMID CANNERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT AT ITS PLANT IN LEAMINGTON WORKING IN OR OUT OF THE BOILER ROOM, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13188-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. VROOM CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13191-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CONSTRUCTION PRODUCTS INCORPORATED, CANADIAN DIVISION (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (4 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DRAFTSMEN EMPLOYED BY THE RESPONDENT ARE TECHNICAL EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

13192-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CONSTRUCTION PRODUCTS INCORPORATED, CANADIAN DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

13193-67-R: TORONTO PRINTING PRESSMEN AND ASSISTANTS' UNION No. 10 (APPLICANT) V. THE WILSON PUBLISHING COMPANY OF TORONTO LIMITED (RESPONDENT).



UNIT: "ALL PRESSMEN, ASSISTANT PRESSMEN AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(30 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT FLY-BOYS AND PAPER HANDLERS ARE COMMONLY ASSOCIATED, ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, WITH EMPLOYEES IN THE BARGAINING UNIT AND ARE THEREFORE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

13198-67-R: LONDON COMMERCIAL AND PAPER BOX WORKERS' UNION No. 510 (APPLICANT) V. HUNTER PRINTING LONDON LTD. (RESPONDENT).

UNIT: "ALL PRESSMEN AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT AT LONDON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ALL LETTER-PRESS AND OFFSET PRESSMEN ARE INCLUDED IN THE BARGAINING UNIT.

13200-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. KILMER VAN NOSTRAND CO. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13202-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CALCO METAL MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(12 EMPLOYEES IN THE UNIT).

13207-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. JOE PANTALONE MASONRY CONTRACTOR LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13208-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13213-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ANGLIN-NORCROSS ONTARIO LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13221-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BOYLES INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (46 EMPLOYEES IN THE UNIT).

13222-67-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. W. L. TAYLOR LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LEAMINGTON AND MERSEA TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

THE RESPONDENT OPERATES CAFETERIA OR CANTEN CONCESSIONS ON THE PREMISES OF THREE COMPANIES, TWO OF WHICH ARE LOCATED IN LEAMINGTON AND THE THIRD IS LOCATED IN MERSEA TOWNSHIP. THE RESPONDENT EMPLOYS ALL BUT TWO OF ITS EMPLOYEES ON THE PREMISES OF ONE OF THE COMPANIES AT LEAMINGTON. ONLY ONE EMPLOYEE IS EMPLOYED AT EACH OF THE OTHER TWO COMPANIES. IN THESE CIRCUMSTANCES, THE BOARD FINDS THE ABOVE UNIT TO BE APPROPRIATE.

13223-67-R: BRICKLAYERS, MASONS & PLASTERERS UNION OF AMERICA LOCAL #6 (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF WINDSOR (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND APPRENTICE BRICKLAYERS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13227-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. NORTH END CONTRACTORS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13255-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. BELBEE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA

BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13266-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 493 (APPLICANT) V. GERARD CONSTRUCTION (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 267 ).

13267-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION #1450 (APPLICANT) V. THOMAS FULLER (1958) LTD. CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13270-67-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. SUTTON STEERING AND COLLISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

13271-67-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. VINCE SUPER AUTO BODY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

13272-67-R: LOCAL UNION No. 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. SIGN-POST DISTRIBUTORS (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13273-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. MICROMATIC HONE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

13274-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THERMOTEX WINDOWS OF CANADA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (47 EMPLOYEES IN THE UNIT).

13279-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 (APPLICANT) V. CRUMP MECHANICAL CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (22 EMPLOYEES IN THE UNIT).

13280-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. VANCAN METAL ERECTORS (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

13280-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 880 (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

THE ATTENTION OF THE PARTIES IS DRAWN TO THE CEDARHURST PAVING COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER, 1964, P. 442.

13290-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. THOMAS FULLER CONSTRUCTION Co., (1958) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13291-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 1036 (APPLICANT) V. ALGO CONTRACTING Co. LTD. (RESPONDENT).



UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

13065-67-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS (APPLICANT) V. SWIFT CANADIAN Co., LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS TORONTO PLANT, SAVE AND EXCEPT EXECUTIVE OFFICERS, GENERAL OFFICE EMPLOYEES AND SALES STAFF, SUPERINTENDENT, ASSISTANT SUPERINTENDENT, DIVISION SUPERINTENDENTS, GENERAL FOREMEN, FOREMEN, FORELADIES, ASSISTANT FOREMEN, PROTECTION STAFF, STANDARDS DEPARTMENT, INCLUDING TIME STUDY MEN, STANDARDS CHECKERS AND CLERKS, RECORDS DEPARTMENT AND PLANT CLERKS, TIMEKEEPER AND TIME CLERKS, TECHNICAL STAFF, RECEIVERS AND LIVESTOCK BUYERS, ASSISTANT CHIEF ENGINEERS, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER, AND PERSONS COVERED BY ANY SUBSISTING COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2

13092-67-R: BOOT AND SHOE WORKERS' UNION, AFFILIATED WITH THE C.I.O. A.F. OF L. C.I.O. (APPLICANT) V. CITY FRAME & WOODWORKING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12303-66-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 280-A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. DOMINION SPORTSERVICE LIMITED (RESPONDENT).

UNIT: "ALL FULL TIME AND PART TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS AND BAR BOYS IN THE EMPLOY OF THE RESPONDENT AT NEW WOODBINE RACEWAY IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT BAR SUPERVISORS AND PERSONS ABOVE THE RANK OF BAR SUPERVISOR." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	43
NUMBER OF PERSONS WHO CAST BALLOTS	40
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	40
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

12788-66-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. SHANTZ PROCESSING LIMITED (RESPONDENT) V. FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL CIO CLC (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (93 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	72
NUMBER OF PERSONS WHO CAST BALLOTS	62
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	60
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	2

12795-66-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 210, WINDSOR, ONTARIO (AFFILIATED WITH BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL-CIO-CLC) (APPLICANT) V. SYDENHAM DISTRICT HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, OFFICE STAFF, AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 9TH, 1967 WHEREBY THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT." (10 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

NUMBER OF PERSONS ON REVISED VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

12929-67-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. HARDING CARPETS (COLLINGWOOD) LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #1) V. TEXTILE WORKERS UNION OF AMERICA AFL-CIO-CLC (INTERVENER #2) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT FIXER ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF FIXER ASSISTANT FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY A CERTIFICATE DATED APRIL 3RD, 1967 ISSUED BY THE BOARD TO CANADIAN UNION OF OPERATING ENGINEERS."  
(56 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	77
NUMBER OF PERSONS WHO CAST BALLOTS	73
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	56
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

NO VOTE CONDUCTED

12890-66-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED, CHEMICAL AND METALURGICAL DEPT., PORT UNION PLANT (RESPONDENT). (4 EMPLOYEES).

12903-66-R: CANADIAN UNION OF SHIPBUILDING AND MARINE WORKERS (C.N.T.U.) (APPLICANT) V. COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING & ENGINEERING LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA, LOCAL 6320 (INTERVENER). (798 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 246).

13048-67-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. DRavo OF CANADA LTD. (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 261).

13066-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ECSTALL MINING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (351 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 264).

13075-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER). (4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 265 ).

13089-67-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (APPLICANT) V. W. T. HAWKINS LIMITED (RESPONDENT). (48 EMPLOYEES).

13127-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. SIL-JOE HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13138-67-R: LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WORKWELL WOODWORKING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

13157-67-R: CANADIAN ELECTRICAL TRADE UNION (APPLICANT) V. THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF MOUNT FOREST (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

13161-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BRANDON McDONALD CONSTRUCTION LTD. (RESPONDENT). (6 EMPLOYEES).

13168-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PIONEER CONSTRUCTION CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (12 EMPLOYEES).

13187-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. THE AUSTIN COMPANY LIMITED (RESPONDENT). (5 EMPLOYEES).

13189-67-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL #704 (APPLICANT) V. NOVO AUTOMOTIVE PRODUCTS LIMITED (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER). (24 EMPLOYEES).

13210-67-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED (RESPONDENT). (8 EMPLOYEES).



13220-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. PHILCO CORPORATION OF CANADA LTD. (RESPONDENT). (133 EMPLOYEES).

13224-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. THOMAS FULLER CONSTRUCTION CO., (1958) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13225-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 786 (APPLICANT) V. CANADIAN BECHTEL LIMITED (RESPONDENT). (24 EMPLOYEES).

13226-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL 786 (APPLICANT) V. FRASER-BRACE ENGINEERING COMPANY, LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS (INTERVENER). (65 EMPLOYEES).

13236-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (APPLICANT) V. ALGO CONTRACTING CO. (RESPONDENT). (3 EMPLOYEES).

13287-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 736 (APPLICANT) V. COOKSVILLE STEEL LIMITED (RESPONDENT). (5 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

12930-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ELLWOOD ROBINSON LIMITED (RESPONDENT) V. ALGOMA CONSTRUCTION WORKERS UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING WITHIN SAULT STE. MARIE AND WITHIN A RADIUS OF THIRTY-FIVE MILES OF SAULT STE. MARIE ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		12
NUMBER OF PERSONS WHO CAST BALLOTS		17
BALLOTS SEGREGATED AND NOT COUNTED	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	9	

13064-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V.  
ST. JOSEPH'S HOSPITAL (RESPONDENT) V. LOCAL 944, I.U.O.E. (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND THEIR HELPERS IN THE  
EMPLOY OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT THE CHIEF ENGINEER."  
(6 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	3

13117-67-R: MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED  
EMPLOYEES LOCAL 647 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. TEESWATER CREAMERY  
LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT TEESWATER AND  
MILDMAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN,  
OFFICE STAFF, TERRITORIAL SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT  
MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL  
VACATION PERIOD." (70 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	68
NUMBER OF PERSONS WHO CAST BALLOTS	67
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	47

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12319-66-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES  
& CANADA (APPLICANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND  
EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY,  
OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24  
HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	30
NUMBER OF PERSONS WHO CAST BALLOTS	43
BALLOTS SEGREGATED AND NOT COUNTED	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
MISSING BALLOT	1

NUMBER OF BALLOTS MARKED AGAINST  
APPLICANT

29

12959-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PORT ARTHUR SHIPBUILDING COMPANY (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ACCOUNTANT, PURCHASING AGENT, AND ONE SECRETARY EACH TO THE MANAGER, THE ASSISTANT MANAGER AND THE PERSONNEL OFFICER, SECURITY GUARDS, CAFETERIA STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 865, THE RESPONDENT AND THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, LOCAL 1671, THE RESPONDENT AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628, THE RESPONDENT AND THE LUMBER & SAWMILL WORKERS UNION LOCAL 2693, AND THE RESPONDENT AND THE APPLICANT." (22 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	23
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	13

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

13100-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. VARAMAE CONSTRUCTION LTD., 250 MERTON AVENUE, TORONTO, ONTARIO (RESPONDENT). (3 EMPLOYEES).

13169-67-R: HOTEL, MOTEL, RESTAURANT EMPLOYEES AND BEVERAGE DISPENSERS UNION, LOCAL 757 (APPLICANT) V. PORT ARTHUR LABOUR ASSOCIATION (RESPONDENT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 268, AFL-CIO, CLC (INTERVENER). (10 EMPLOYEES).

13174-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND (RESPONDENT). (8 EMPLOYEES).

13201-67-R: LOCAL UNION No. 1940 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RELIABLE CONSTRUCTION (RESPONDENT). (32 EMPLOYEES).

13215-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. MATTHEWMAN R.W. - DIV MODEL DYE WORKS (CANADA) LTD. (RESPONDENT) V. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (INTERVENER). (2 EMPLOYEES).

13217-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO:CLC (APPLICANT) V. MINE SAFETY APPLIANCES COMPANY OF CANADA LIMITED (RESPONDENT). (18 EMPLOYEES).

13285-67-R: BRICKLAYERS & MASONS UNION, LOCAL NO. 1, ONTARIO (APPLICANT)  
V. RYCO-CAPE LIMITED (RESPONDENT). (10 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING JUNE

12846-66-R: FRANK GREENE AND GORDON YAKE (APPLICANTS) V. TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 141 (RESPONDENT)  
V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (INTERVENER).  
(25 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 268).

13003-67-R: FOR THE EMPLOYEES OF CANADIAN GROUND SUPPORT LTD. WHOSE  
NAMES APPEAR ON ATTACHED LIST AND MYSELF JACK COLLINS (APPLICANT) V.  
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504  
(RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF CANADIAN GROUND SUPPORT LTD. AT 2291 LASALLE  
BLVD., IN THE CITY OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE  
THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS HIRED DURING THE SUMMER  
VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	20

13019-67-R: GRAHAM SIMPSON (APPLICANT) V. INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 796 (RESPONDENT). (GRANTED).

- AND -

13020-67-R: ADELARD SEQUIN (APPLICANT) V. INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 796 (RESPONDENT). (GRANTED).

- AND -

13021-67-R: IVAN GILES (APPLICANT) V. INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 796 (RESPONDENT). (GRANTED).

UNIT: "ALL STATIONARY ENGINEERS IN THE EMPLOY OF SIMPSONS-SEARS LTD. AT  
2165 CARLING AVENUE, OTTAWA." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	3



13039-67-R: LORNE ROBINSON, HERBERT E. CADIOU, GARY PATTERSON, ROSS CUMMING AND JAMES BEAN (APPLICANTS) V. GALT TYPOGRAPHICAL UNION No. 411 (RESPONDENT). (DISMISSED). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 275 ).

13118-67-R: NICADEMO MAMMOLA (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT) V. VILLAGE CONTRACTORS (INTERVENER). (20 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 277 ).

13119-67-R: COLAROSI ALFONZO (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT) V. ZACHARY DE VUONO LIMITED (INTERVENER). (13 EMPLOYEES). (DISMISSED).

13175-67-R: HERBERT CADIOU, GARY PATTERSON, JAMES BEAN, ROSS CUMMING AND LORNE ROBINSON (APPLICANTS) V. GALT TYPOGRAPHICAL UNION No. 411 (RESPONDENT). (DISMISSED). (5 EMPLOYEES).

13269-67-R: GERALD CYR (APPLICANT) V. INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS OF AMERICA LOCAL UNION 527 FOR LABOURERS (RESPONDENT). (11 EMPLOYEES). (DISMISSED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JUNE

13206-67-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED (APPLICANT) V. OMER LEBLANC ET AL (RESPONDENTS). (WITHDRAWN).

13228-67-U: RYCO-CAPE LIMITED (APPLICANT) V. THE BRICKLAYERS' AND MASONS' UNION LOCAL No. 1, ONTARIO, OF THE CITY OF HAMILTON (RESPONDENT). (WITHDRAWN).

13229-67-U: RYCO-CAPE LIMITED (APPLICANT) V. MICHAEL BLIEDUNG, GABRIELLE IANETTI, WALTER KENNY, SEBERT KIDD, SALVATORE MAGLIARO, ELIO MORO, EDWARD SMITH, FRED SMITH, ARNOLD SCHROEDER AND FRANK XAMIN (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING JUNE

13126-67-U: THE BRICKLAYERS' UNION No. 2 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS, MASONS, PLASTERERS INTERNATIONAL UNION OF AMERICA) (APPLICANT) V. ROBERT McALPINE LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 279 ).

13158-67-U: LOCAL UNION #721, OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) V. P. A. SHERWOOD WINDOWS LTD. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

12991-67-U: THE INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT)  
V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT). (GRANTED).

13035-67-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA  
(APPLICANT) V. TAMBLYN-PRITCHARD CONSTRUCTION LTD. (RESPONDENT).  
(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 282).

13084-67-U: LOCAL UNION 647, MILK & BREAD DRIVERS AND DAIRY EMPLOYEES,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA (APPLICANT) V. TEESWATER CREAMERY LIMITED, AND  
JAMES DEZELUW AND DONALD CLARK (RESPONDENTS). (WITHDRAWN).

13123-67-U: CANADIAN BECHTEL COMPANY LIMITED (APPLICANT) V. OPERATIVE  
PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED  
STATES AND CANADA, LOCAL 162 AND A. D. MARIANO AND RENE A. PILON  
(RESPONDENTS). (DISMISSED).

13155-67-U: HOAR TRANSPORT CO. LTD. (APPLICANT) V. RHEAL CORRIVEAU,  
ET AL (RESPONDENTS). (WITHDRAWN).

13162-67-U: HOAR TRANSPORT CO. LTD. (APPLICANT) V. ERNEST BOISSONNEAULT  
ET AL (RESPONDENTS). (WITHDRAWN).

13205-67-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED (APPLICANT) V.  
OMER LEBLANC ET AL (RESPONDENTS). (WITHDRAWN).

13230-67-U: RYCO-CAPE LIMITED (APPLICANT) V. ELIO MORO (RESPONDENT).  
(WITHDRAWN).

13231-67-U: RYCO-CAPE LIMITED (APPLICANT) V. THE BRICKLAYERS' AND MASONS'  
UNION LOCAL NO. 1, ONTARIO, OF THE CITY OF HAMILTON (RESPONDENT).  
(WITHDRAWN).

13232-67-U: RYCO-CAPE LIMITED (APPLICANT) V. WILLIAM McDOWELL (RESPONDENT).  
(WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JUNE

12770-66-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES  
AND CANADA (COMPLAINANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT).  
(DISMISSED).

12860-66-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL  
UNION 2679 (COMPLAINANT) V. I. W. WOOD PRODUCTS LTD. (RESPONDENT).  
(DISMISSED).

12891-66-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2679 (COMPLAINANT) V. I. W. WOOD PRODUCT LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 283 ).

12982-67-U: CANADIAN TEXTILE COUNCIL (COMPLAINANT) V. HARDING CARPETS (COLLINGWOOD) LIMITED (RESPONDENT). (DISMISSED).

(WRITTEN REASONS TO BE ISSUED).

13036-67-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. BOYLE MIDWAY (CANADA) LIMITED (RESPONDENT). (GRANTED).

(WRITTEN REASONS, PAGE 286 ).

13090-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. INDALEX LIMITED (RESPONDENT). (GRANTED).

(WRITTEN REASONS TO BE ISSUED).

13104-67-U: MR. REMI LEROUX (COMPLAINANT) V. CANADIAN BECHTEL LIMITED (SHERMAN MINE, TIMAGAMI PROJECT) (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 292 ).

13114-67-U: ROBERT MICHAEL SCHMELEFSKE (COMPLAINANT) V. BORDEN CHEMICAL COMPANY (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

13149-67-U: THE PRINTING SPECIALTIES & PAPER PRODUCTS UNION, No. 466 (COMPLAINANT) V. E. S. & A. ROBINSON (CANADA) LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 295 ).

13204-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. BRYDON BRASS MANUFACTURING Co. LTD. (RESPONDENT). (WITHDRAWN).

#### APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

13194-67-M: THE WILSON & COUSINS Co. LIMITED, AND THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 512 (APPLICANTS). (GRANTED).

#### APPLICATION UNDER SECTION 47A DISPOSED OF DURING JUNE

13068-67-M: CANADA VALVE LIMITED (APPLICANT) V. PHILIP GIES FOUNDRY LIMITED; LOCAL #279, INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION; THE CANADA VALVE AND HYDRANT COMPANY, LIMITED; THE COMMITTEE AND THE HOURLY-PAID EMPLOYEES OF THE CANADA VALVE AND HYDRANT COMPANY, LIMITED (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 297 ).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF

DURING JUNE

12510-66-M: UNITED STEELWORKERS OF AMERICA, (LOCAL UNION No. 6398) (APPLICANT) V. SAMUEL, SON & CO. LIMITED (RESPONDENT).

13101-67-M: LOCAL UNION 633 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO (TRADE UNION) V. SHERBOURNE MEAT MARKET (EMPLOYER).

13181-67-M: ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000, CANADIAN UNION OF PUBLIC EMPLOYEES, C.L.C. (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

13182-67-M: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED (RESPONDENT).

JURISDICTIONAL DISPUTES SECTION 66(6)

13309A-67-JD: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (COMPLAINANT) V. CRUMP MECHANICAL CONTRACTING LIMITED; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILLWRIGHTS LOCAL 2309; INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (RESPONDENTS).

13309B-67-JD: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (APPLICANT) V. PIGOTT CONSTRUCTION Co. LIMITED, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; MILLWRIGHTS LOCAL 2309 AND INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (RESPONDENTS).

13156-67-JD: JOHN N. BROCKLESBY TRANSPORT LIMITED (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS - LOCAL 419 INTERNATIONAL BROTHERHOOD OF OPERATING ENGINEERS - LOCAL 793 (RESPONDENTS).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12943-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BURLINGTON-NELSON HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

13193-67-R: TORONTO PRINTING PRESSMEN AND ASSISTANTS' UNION No. 10 (APPLICANT) V. THE WILSON PUBLISHING COMPANY OF TORONTO LIMITED (RESPONDENT). (REQUEST DENIED).



INDEXED ENDORSEMENTS - CERTIFICATION

12903-66-R: CANADIAN UNION OF SHIPBUILDING AND MARINE WORKERS (C.N.T.U.  
(APPLICANT) V. COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING &  
ENGINEERING LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA, LOCAL  
6320 (INTERVENER).

BEFORE G. W. REED Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER  
AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN G. SCOTT AND W. SUNSTRUM FOR THE  
APPLICANT; B. STEWART FOR THE RESPONDENT; AND J. H. OSLER, Q.C.,  
AND E. HURST FOR THE INTERVENER.

DECISION OF THE BOARD: (JUNE 8, 1967)

1. THIS IS AN APPLICATION FOR CERTIFICATION. IN AN EARLIER  
DECISION, DATED MAY 9, 1967, THE BOARD FOUND THE APPLICANT TO BE A TRADE  
UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.  
THE ISSUE NOW BEFORE US CONCERNS, IN THE MAIN, THE FORM 8, DECLARATION  
CONCERNING MEMBERSHIP DOCUMENTS, FILED BY THE APPLICANT.

2. THE MEMBERSHIP DOCUMENTS FILED IN SUPPORT OF THE APPLICATION  
WERE OF TWO KINDS, A LONG CARD, FORTY IN NUMBER, MOST OF WHICH WERE DATED  
PRIOR TO MARCH 5, 1967, THE DATE THE APPLICANT UNION WAS FORMED, AND A  
WIDE CARD, APPROXIMATELY 380 IN NUMBER, THE VAST MAJORITY OF WHICH WERE  
DATED AFTER MARCH 5. THE RECEIPT PORTION OF THE LONG CARD PROVIDES AS  
FOLLOWS:

RECEIVED FROM MR.....  
THE SUM OF \$..... AS PAYMENT OF HIS  
INITIATION FEE AND HIS MEMBERSHIP FEE FOR  
..... MONTH(S).  
DATE.....196.....  
(SIGNED).....  
"ATELIERS DE LA CSN"

THE RECEIPT PORTION OF THE WIDE CARD (PRINTED ON THE BACK) IS IN THE  
FOLLOWING TERMS:

RECEIPT

RECEIVED \$.....  
AS ADMISSION FEE STARTING  
....., 19.....  
PAID BY.....

THIS WILL SERVE TO IDENTIFY THE ABOVE AS A  
CANDIDATE FOR MEMBERSHIP IN:

THE CANADIAN UNION OF SHIPBUILDING  
& MARINE WORKERS C.N.T.U.

UNTIL THE OFFICIAL MEMBERSHIP CARD IS  
ISSUED.

PAID TO.....  
(COLLECTOR'S SIGNATURE)

3. THE APPLICANT ALSO FILED WITH THE BOARD, AS REQUIRED BY ITS RULES OF PROCEDURE, A FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS. TO BE MORE PRECISE, THE APPLICANT FILED THREE OF THESE FORMS, ONE COVERING 380 WIDE CARDS AND DATED APRIL 4, 1967, ONE COVERING 38 LONG CARDS, ALSO DATED APRIL 4, 1967, AND ONE COVERING ONE ADDITIONAL CARD, AND DATED APRIL 11, 1967. PARAGRAPH 3 OF THE FORM PROVIDES:

3. (WHERE THE DOCUMENTARY EVIDENCE CONSISTS IN PART OF RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES) ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGEMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:

THERE WERE NO EXCEPTIONS NOTED FOLLOWING THE WORDS "EXCEPT IN THE FOLLOWING INSTANCES" ON ANY OF THE THREE FORMS, ALL OF WHICH WERE SIGNED BY DONALD BELL, THE PRESIDENT OF THE APPLICANT UNION. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE WORDING OF THE RECEIPT, IT WOULD THEREFORE APPEAR TO ANYONE READING THE RECEIPTS THAT THE EMPLOYEES SIGNING THE WIDE APPLICATION FOR MEMBERSHIP CARDS HAD PAID THEIR ADMISSION FEES TO THE PERSON SIGNING THE RECEIPT AS COLLECTOR ON THE DATES NOTED ON THE RECEIPTS.

4. ON APRIL 5, 1967, AN INTERVENTION WAS FILED WITH THE BOARD BY THE INTERVENING TRADE UNION, WHICH, INTER ALIA, ALLEGED:

2. THE APPLICANT WAS NOT IN EXISTENCE WHEN THE MAJORITY OF ITS ALLEGED APPLICATIONS FOR MEMBERSHIP WERE MADE.

. . . .

5. CARDS PURPORTING TO VALIDATE APPLICATIONS MADE BEFORE THE APPLICANT CAME INTO EXISTENCE WERE THEMSELVES SIGNED AT A DATE EARLIER THAN THE ONE SHOWN ON THE CARD AND BEFORE THE APPLICANT CAME INTO EXISTENCE.

5. PARTICULARS OF THESE ALLEGATIONS WERE DEMANDED BY THE APPLICANT IN A LETTER RECEIVED BY THE BOARD ON APRIL 10, AND, APPARENTLY, IN A TELEPHONE CALL TO THE SOLICITORS FOR THE INTERVENER ON THE SAME DATE, AND THESE WERE GIVEN BY LETTER DATED APRIL 10 (EXHIBIT #8). THE PARTICULARS RELATING TO ALLEGATIONS #2 AND #5 ABOVE ARE SET FORTH IN EXHIBIT #8 AS FOLLOWS:

2. WE ARE ADVISED THAT MOST OF THE CARDS FILED IN SUPPORT OF THE APPLICATION WERE SIGNED AND PAID FOR, IF AT ALL, PRIOR TO ANY DATE UPON WHICH THE APPLICANT MAY HAVE COME INTO EXISTENCE AS A TRADE UNION.
5. WE ARE ADVISED THAT AN ATTEMPT WAS MADE AFTER A SO-CALLED CONSTITUTION WAS ADOPTED BY THE PRESENT APPLICANT TO TRANSFER CARDS SIGNED AND MONEY PAID WITH RESPECT TO THE CNTU AT AN EARLIER DATE SO AS TO MAKE THEM EFFECTIVE WITH RESPECT TO THE PRESENT APPLICANT. WE ARE ADVISED THAT SOME OF THESE WERE SIGNED PRIOR TO THE DATE UPON WHICH THE PRESENT APPLICANT PURPORTED TO ADOPT A CONSTITUTION, SOME WERE SIGNED WITHOUT THE PAYMENT OF MONEY AND SOME WERE SIGNED ON THE PROMISE THAT MONEY WOULD BE RETURNED IF THE APPLICATION SHOULD NOT SUCCEED.

EXHIBIT #8 WAS NOT FILED WITH THE BOARD UNTIL THE BOARD HEARING IN THIS CASE ON MAY 18TH. THE FIRST HEARING TOOK PLACE ON APRIL 12TH. AT THAT HEARING THERE WAS NO INDICATION BY THE APPLICANT THAT IT, IN EFFECT, INTENDED TO "MODIFY" THE STATEMENTS CONTAINED IN PARAGRAPH 3 OF FORM 8.

6. ON MAY 1, THE DAY BEFORE THE SECOND HEARING IN THE CASE, THE BOARD RECEIVED A LETTER FROM THE APPLICANT'S SOLICITORS, DATED APRIL 28, WHICH, FOR THE FIRST TIME, BROUGHT TO THE ATTENTION OF THE BOARD CERTAIN FACTS RESPECTING THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT. THE ADMISSIONS CONTAINED IN THE LETTER, TOGETHER WITH SUBSEQUENT EVIDENCE HEARD BY THE BOARD, ESTABLISH THAT, PRIOR TO THE FORMATION OF THE APPLICANT UNION ON MARCH 5, AN ORGANIZING CAMPAIGN HAD BEEN CONDUCTED BY A GROUP OF EMPLOYEES WITH THE ASSISTANCE OF THE CONFEDERATION OF NATIONAL TRADE UNIONS WITH WHICH THE APPLICANT SUBSEQUENTLY BECAME AFFILIATED. THE LONG FORM OF CARD WAS USED IN THIS CAMPAIGN. IT IS A FAIR INFERENCE FROM THE EVIDENCE THAT OVER 300 PERSONS WERE "SIGNED UP" IN THIS FASHION. IT WOULD ALSO APPEAR THAT RECEIPTS WERE ISSUED TO THESE PERSONS IN THE FORM SET OUT ABOVE.

7. THOSE RESPONSIBLE FOR THE FORMATION OF THE APPLICANT HELD THE OPINION THAT THE CARDS SO OBTAINED COULD NOT BE USED ON AN APPLICATION FOR CERTIFICATION TO THIS BOARD BY THE APPLICANT AND THE FOLLOWING COURSE OF ACTION WAS THEREFORE ADOPTED. NEW APPLICATION CARDS, REFERRED TO ABOVE AS THE WIDE CARDS, WERE MADE UP AND THESE WERE USED IN SOLICITING MEMBERSHIP FROM PERSONS WHO HAD NOT ALREADY SIGNED A LONG CARD. WITH RESPECT TO THOSE WHO HAD PREVIOUSLY SIGNED LONG CARDS, THOSE PERSONS WERE TO BE INVITED TO SIGN THE WIDE CARD PROVIDED THEY COULD PRODUCE THE RECEIPT

WHICH HAD BEEN PREVIOUSLY ISSUED TO THEM. IF THEY COULD NOT THEY WOULD STILL BE INVITED TO SIGN THE WIDE CARD IF THE PERSON INVITING THEM TO SIGN COULD FIND THE ORIGINAL CARD IN THE APPLICANT'S POSSESSION. APPROXIMATELY 278 PERSONS ACCEPTED THE INVITATION. THE CARDS SO SIGNED AND THE RECEIPTS ISSUED WERE, EXCEPT IN ONE OR TWO CASES, ALL DATED ON OR AFTER MARCH 5. THE PERSONS SIGNING THE NEW CARDS DID NOT PAY ANY FURTHER MONEY TOWARDS THEIR ADMISSION FEES. FURTHER, THERE IS NO EVIDENCE TO SUGGEST THAT AN ATTEMPT WAS MADE TO HAVE THE ORIGINAL COLLECTORS OF MONEY CONTACT THE PERSONS FROM WHOM THEY COLLECTED THE INITIAL ADMISSION FEE PRIOR TO MARCH 5. IN OTHER WORDS, IT IS A FAIR INFERENCE THAT THE PERSONS WHO SIGNED THE RECEIPTS ATTACHED TO THE WIDE CARDS AFTER THE WORDS "PAID TO" AND ABOVE THE WORDS "(COLLECTOR'S SIGNATURE)" WERE NOT IN MANY INSTANCES, IN THE CASE OF THE 278 CARDS WITH WHICH WE ARE CONCERNED, THE PERSONS TO WHOM THE MONEY HAD IN FACT BEEN PAID. IN ADDITION, THE DATES ON THE RECEIPTS WERE NOT THE DATES ON WHICH THE MONEYS WERE ACTUALLY PAID.

8. THERE IS NO EVIDENCE INDICATING HOW MANY NEW CARDS WERE ISSUED ON THE BASIS OF OLD RECEIPTS PRODUCED BY EMPLOYEES AND HOW MANY ON THE BASIS OF THE LONG CARDS IN THE POSSESSION OF THE APPLICANT. BELL, THE PRESIDENT OF THE APPLICANT, AND THE PERSON WHO SIGNED THE FORM 8, TESTIFIED THAT WHERE OLD RECEIPTS WERE PRODUCED THEY WERE EXCHANGED FOR NEW ONES BUT, ACCORDING TO BELL, THEY WERE UNABLE TO "ACCUMULATE" ALL OF THE OLD RECEIPTS. PRESUMABLY, THEN, THERE WERE A NUMBER OF INSTANCES WHERE NEW RECEIPTS WERE ISSUED (AND NEW CARDS SIGNED) ALTHOUGH OLD RECEIPTS WERE NOT PRODUCED FOR INSPECTION. IN THESE CIRCUMSTANCES, IT IS NOT CLEAR WHY BELL, WHO TESTIFIED THAT HE MADE INQUIRIES OF ALL THE PERSONS GETTING THE WIDE CARDS SIGNED UP AS TO WHETHER THEY RECEIVED A RECEIPT FOR EACH NEW CARD ISSUED, ONLY KNEW OF ONE CASE, IN WHICH HE WAS PERSONALLY INVOLVED, WHERE A RECEIPT WAS NOT PRODUCED. PERHAPS THE ANSWER LIES IN HIS STATEMENT THAT THE PERSONS TO WHOM HE DIRECTED HIS INQUIRIES "ALL ASSURED [HIM] MORE OR LESS" THAT THE PERSONS TO WHOM THE NEW CARDS HAD BEEN ISSUED HAD PAID. [EMPHASIS ADDED]

9. THE FORM 8 IN QUESTION WAS PREPARED BY THE SOLICITORS FOR THE APPLICANT AND BELL SIGNED IT IN THEIR OFFICES. HE TESTIFIED THAT HE READ IT "IN GENERAL" BUT NOT "IN CAREFUL DETAIL" AND UNDERSTOOD IT TO SAY THAT FOR EVERY CARD FILED WITH THE BOARD A DOLLAR HAD BEEN PAID AND HE BELIEVED THIS TO BE TRUE. WHEN FACED WITH THE LAST SENTENCE IN PARAGRAPH 3 OF FORM 8,

ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:



BELL REPLIED, "I CAN'T SAY EXACTLY THAT WHAT I SIGNED WAS A COMPLETELY TRUE STATEMENT." OF THIS THERE CAN BE NO DOUBT. CLEARLY IN MANY INSTANCES (HOW MANY WE DO NOT KNOW), THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS FILED WITH THE BOARD AS COLLECTORS WERE NOT THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND, JUST AS CLEARLY IN THE SAME NUMBER OF CASES, THE MEMBER DID NOT PAY THE COLLECTOR WHOSE NAME APPEARS ON THE RECEIPT.

10. COUNSEL FOR THE INTERVENER SUBMITS THAT THE APPLICATION SHOULD BE DISMISSED BY REASON OF THE FALSE AND MISLEADING STATEMENTS CONTAINED IN FORM 8 WHICH WERE NOT CORRECTED UNTIL SOME CONSIDERABLE TIME AFTER THE INTERVENER'S ALLEGATIONS IN ITS INTERVENTION. IN SUPPORT THEREOF HE REFERRED TO THE WEBSTER AIR EQUIPMENT CASE, 1958, VOL. 1, C.L.L.C. ¶18,110, C.L.S. 76-598; THE NATIONAL STEEL CAR CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 738; AND THE ESSEX WIRE CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1965, P. 490. COUNSEL FOR THE APPLICANT ARGUED THAT WHAT TOOK PLACE HERE SHOULD NOT EFFECT THE ADMISSIBILITY OF THE MEMBERSHIP EVIDENCE BUT SHOULD ONLY GO TO ITS WEIGHT ON MATTERS TO BE CONSIDERED AT A LATER STAGE OF THESE PROCEEDINGS. HIS SUBMISSION WAS THAT IT IS ONLY WHERE THERE HAS BEEN A FAILURE TO DISCLOSE SOMETHING MUCH MORE SERIOUS THAN HERE, SUCH AS A "NON-PAY" OR A "NON-SIGN", THAT THERE IS A CASE GOING TO ADMISSIBILITY. IN THIS CASE, COUNSEL ARGUED, WHILE THERE WAS CARELESSNESS IN COMPLETING THE FORM 8, THIS IS NOT SUFFICIENT TO WARRANT A DISMISSAL. HE REFERRED TO THE GLOBE & MAIL CASE, 1903, VOL. 2, C.L.L.C., ¶16,290; C.L.S. 70-941. COUNSEL FOR THE RESPONDENT DID NOT ARGUE THE POINT OTHER THAN TO DISAGREE WITH COUNSEL FOR THE APPLICANT THAT THE BOARD SHOULD ACT ONLY IN CASES WHERE THERE HAS BEEN A FAILURE TO DISCLOSE SUBSTANTIAL ERRORS. IN HIS VIEW, THIS WOULD MEAN THAT NO PENALTY WOULD ATTACH FOR FAILURE TO COMPLETE FORM 8 PROPERLY BECAUSE SUBSTANTIAL ERRORS IN THEMSELVES, QUITE APART FROM THE FAILURE TO MAKE FULL DISCLOSURE, MAY WELL RESULT IN DISMISSAL OF THE APPLICATION.

11. THE PRINCIPLES RELATING TO THE QUESTION OF DISCLOSURE AND THE REASONS WHY THE BOARD REQUIRES FULL DISCLOSURE HAVE BEEN SPELLED OUT IN MANY OF OUR DECISIONS. THE WEBSTER AIR EQUIPMENT CASE (SUPRA) IS PERHAPS THE LEADING CASE ON THE SUBJECT. IN THAT DECISION THE BOARD HAD THIS TO SAY AT PAGE 1717 (C.L.L.C.):

IT IS OBVIOUSLY A PRACTICAL IMPOSSIBILITY FOR THE BOARD TO INTERVIEW EACH EMPLOYEES ON WHOSE BEHALF DOCUMENTARY EVIDENCE OF MEMBERSHIP IS FILED IN A CERTIFICATION PROCEEDING, IN ORDER TO ASCERTAIN WHETHER HE HAS PERSONALLY SIGNED THE APPLICATION FOR MEMBERSHIP AND WHETHER HE HAS PAID ON HIS OWN BEHALF THE DUES OR FEES WHICH THE RECEIPT ACCOMPANYING THE APPLICATION PURPORTS TO ACKNOWLEDGE. IN ADDITION TO COMPARING THE SIGNATURE ON THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE UNION WITH FACSIMILE SIGNATURES FILED BY THE EMPLOYER, THE BOARD SEEKS FROM THE REPRESENTATIVE OF THE UNION WHO APPEARS AT THE

HEARING ASSURANCES THAT THE PAYMENT OF DUES HAS CONFORMED TO THE BOARD'S POLICY IN THAT REGARD, AND IT REQUIRES SUCH ASSURANCES TO BE BASED ON PERSONAL KNOWLEDGE OF THE FACTS OR ON INQUIRIES FROM THE PERSONS WHO THEMSELVES COLLECTED MONEY. IN THE NORMAL COURSE, THE BOARD ACCEPTS SUCH REPRESENTATIONS AT THEIR FACE VALUE. HOWEVER, SINCE THE BOARD IS COMPELLED TO REPLY TO SUCH AN EXTENT ON EVIDENCE WHICH, BY THE VERY NATURE OF THINGS, IS NOT SUBJECT TO EXAMINATION BY THE PARTIES TO THE PROCEEDINGS (SEE SECTION 72(1) [NOW 83(1)] OF THE LABOUR RELATIONS ACT), IT MUST BE VERY CIRCUMSPECT IN ACCEPTING IT AND IT MUST INSIST ON THE HIGHEST STANDARDS OF INTEGRITY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE. ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT. IN DEALING WITH THIS SITUATION, THE BOARD HAS MADE A DISTINCTION BETWEEN TWO TYPES OF CASES: (i) WHERE THE ACTION IMPUGNED IS THAT OF A RESPONSIBLE OFFICER OR OFFICIAL OF A UNION, AND (ii) WHERE THE ACTION IS THAT OF A SUPPORTER OR CANVASSER ON BEHALF OF AN APPLICANT WHO OCCUPIES AN INFERIOR OFFICE OR NO OFFICE IN THE UNION. IN SO FAR AS THE FIRST OF THESE IS CONCERNED, THE BOARD SAID IN THE RCA VICTOR COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, ¶17,067, C.L.C. 76-412, THAT, EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, "THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION". WHERE THE IRREGULARITY RELATES TO EVIDENCE OF MEMBERSHIP PROCURED BY A PERSON OF LESSER RANK IN THE UNION ORGANIZATION, THE BOARD HAS TAKEN THE POSITION THAT THE CARD IN RESPECT OF WHICH THE IRREGULARITY IS ESTABLISHED IS DISALLOWED AND THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP WILL DEPEND ON THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS.

12. THIS CASE WAS DECIDED AT A TIME WHEN THE ASSURANCES REFERRED TO IN THE PASSAGE QUOTED WERE ORAL ASSURANCES GIVEN THE BOARD AT THE HEARING BY THE APPLICANT'S REPRESENTATIVE. THIS PRACTICE WAS REPLACED IN 1960 BY THE REQUIRED FILING OF FORM 9 BY THE APPLICANT WHICH, IN 1966, WAS IN TURN REPLACED BY FORM 8.

13. THE REQUIREMENT OF WRITTEN ASSURANCES HAS SERVED TO EMPHASIZE THE CONCERN OF THE BOARD FOR FULL DISCLOSURE AND DECISIONS SINCE THE INTRODUCTION OF THE FORMS REFLECT THIS CONCERN. THUS, IN VALLEY TRANSPORTATION COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, NOVEMBER 1963, P. 448, THE BOARD SAID AT P. 451:

IT NEED HARDLY BE POINTED OUT, THAT IT WOULD BE IMPOSSIBLE FOR THE BOARD TO INTERVIEW EACH AND EVERY EMPLOYEE IN RESPECT OF WHOM EVIDENCE OF MEMBERSHIP IS FILED IN APPLICATIONS FOR CERTIFICATION. FURTHER, WHETHER A PERSON IS OR IS NOT A MEMBER OF A TRADE UNION OR DOES OR DOES NOT DESIRE TO BE REPRESENTED BY A TRADE UNION ARE, EXCEPT IN THE SPECIAL CIRCUMSTANCES WHERE THE BOARD CONSENTS TO THEIR DISCLOSURE, MATTERS WHICH ARE PROTECTED FROM DISCLOSURE BY THE PROVISIONS OF SECTION 83 OF THE ACT. BY THE VERY NATURE OF THINGS, THEREFORE, THE BOARD MUST RELY HEAVILY AND ALMOST ENTIRELY ON DOCUMENTARY EVIDENCE WHEN CONSIDERING THE FACTS RELIED ON AS CONSTITUTING PROOF OF THE UNION'S MEMBERSHIP. AS THE DOCUMENTS SUBMITTED AS EVIDENCE OF MEMBERSHIP ARE NOT SUBJECT TO ANY EXAMINATION BY THE OTHER PARTIES TO THE PROCEEDINGS, THE BOARD MUST BE MOST CIRCUMSPECT AND METICULOUS IN ITS EXAMINATION AND ACCEPTANCE OF THEM. THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM. AS WAS SAID BY THE BOARD IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,110, AT P. 12,204,

ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT.

AGAIN, IN HOLLAND RIVER GARDENS COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER 1963, P. 364, WE FIND THIS PASSAGE AT P. 366:

IT IS OBVIOUSLY A PRACTICAL IMPOSSIBILITY FOR THE BOARD TO INTERVIEW EACH EMPLOYEE ON WHOSE BEHALF DOCUMENTARY EVIDENCE OF MEMBERSHIP IS FILED IN A CERTIFICATION APPLICATION. THE BOARD ACCORDINGLY MUST PLACE HEAVY RELIANCE ON THE STATEMENTS CONTAINED IN FORM 9 WHICH IT ACCEPTS AT FACE VALUE. SINCE THE BOARD IS COMPELLED TO RELY TO SUCH AN EXTENT ON FORM 9 IN CONSIDERING THE ADEQUACY OF THE EVIDENCE OF

MEMBERSHIP SUBMITTED BY THE APPLICANT, ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL THE MATERIAL FACTS MUST WEIGH HEAVILY AGAINST THE APPLICANT.

14. THE IMPORTANCE OF THE WRITTEN ASSURANCES CONTAINED IN THE PRESENT FORM 8 IS REFLECTED IN THE CONSEQUENCE OF A FAILURE TO FILE THE FORM. WHILE THE BOARD HAS NOT REQUIRED STRICT COMPLIANCE WITH SECTION 6 OF ITS RULES AS TO THE TIME FOR FILING A FORM 8 AND HAS IN PRACTICE ACCEPTED THEM IF FILED AT THE HEARING, IF NONE IS IN FACT FILED, THIS WILL RESULT IN THE DISMISSAL OF THE APPLICATION. REFERENCE IS MADE TO ESSEX WIRE CORPORATION LIMITED, SUPRA. AS THE BOARD POINTED OUT IN THAT CASE, THE INFORMATION CONTAINED IN THE FORM GOES TO THE ROOT OF THE MEMBERSHIP EVIDENCE FILED BY AN APPLICANT.

15. NOW THERE IS ANOTHER MATTER IN CONNECTION WITH THE FILING OF FORM 8 WHICH MUST NOT BE OVERLOOKED AND THAT IS THE FACT THAT THE PERSON COMPLETING THE FORM HAS A DUTY TO INFORM HIMSELF OF THE FACTS SO AS TO BE SATISFIED THAT THERE ARE NO IRREGULARITIES WHICH OUGHT TO BE DISCLOSED. IN MANY CASES THAT PERSON WILL NOT HAVE PERSONAL KNOWLEDGE OF THE FACTS CONCERNING THE ORGANIZING CAMPAIGN AND SO IT IS INCUMBENT ON HIM TO MAKE INQUIRIES IN ORDER TO COMPLETE THE FORM. FAILURE ON HIS PART, OR ON THE PART OF THOSE PERSONS UNDER HIM RESPONSIBLE FOR DIRECTING THE CAMPAIGN, TO MAKE THE NECESSARY INQUIRIES HAS HAD SERIOUS REPERCUSSIONS FOR AN APPLICANT TRADE UNION. SEE, FOR EXAMPLE, THE NATIONAL STEEL CAR CORPORATION LIMITED CASE, SUPRA. THAT DECISION IS PARTICULARLY SIGNIFICANT HAVING REGARD TO THE FACT THAT THE APPLICATION WAS DISMISSED BECAUSE OF A FAILURE OF RESPONSIBLE OFFICIALS OF THE APPLICANT TRADE UNION TO MAKE INQUIRIES EVEN THOUGH THERE WAS NO EVIDENCE BEFORE THE BOARD THAT ANY IRREGULARITIES IN FACT EXISTED WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED IN SUPPORT OF THE APPLICATION AND DESPITE THE FACT THAT THE BOARD HAD CONDUCTED A REPRESENTATION VOTE ALTHOUGH, ADMITTEDLY, THE BALLOTS HAD NOT BEEN COUNTED.

16. IT IS CLEAR, THEN, THAT A TRADE UNION, APPLYING FOR CERTIFICATION, HAS THE RESPONSIBILITY OF SATISFYING ITSELF THAT THE MATTERS DEALT WITH IN FORM 8 HAVE BEEN PROPERLY INVESTIGATED BY THE PERSON COMPLETING THAT FORM AND, FURTHER, THAT ANY EXCEPTIONS ARE DULY NOTED ON THE FORM. IT IS ALSO CLEAR, HOWEVER, THAT THAT RESPONSIBILITY EXTENDS BEYOND THE MATTERS ENUMERATED IN PARAGRAPH 3 OF THE FORM, THAT IS, THAT THE COLLECTOR NAMED ON THE RECEIPT OR OTHER ACKNOWLEDGMENT OF PAYMENT ACTUALLY COLLECTED THE MONEY AND THAT THE PERSON TO WHOM THE RECEIPT WAS ISSUED, AS HAVING PAID MONEY TOWARDS DUES OR INITIATION FEES, ACTUALLY PAID THE MONEY ON HIS OWN BEHALF TO THE PERSON SHOWN AS THE COLLECTOR. THIS IS WELL ILLUSTRATED IN A RECENT DECISION OF THE BOARD, AS YET UNREPORTED, IN THE FRANK LICARI & SONS CASE, APRIL, 1967, BOARD FILE NO. 12815-66-R. IN THAT CASE THE MEMBERSHIP EVIDENCE FILED WAS FOUND TO HAVE MISLED THE BOARD IN A NUMBER OF WAYS, ONE OF WHICH IS SET OUT IN THE DECISION IN THIS FASHION:



...HOWEVER, EVEN THE ONE APPLICATION AND RECEIPT FILED BY THE APPLICANT WAS MISLEADING. ONE OF THE REQUIREMENTS OF THE BOARD IS THAT THE APPLICATION CARD BE SIGNED AND THE MONEY BE PAID WITHIN CERTAIN TIME LIMITS IN RELATION TO THE DATE OF THE APPLICATION. IT IS THEREFORE IMPORTANT THAT THE DATE ON THE CARD AND THE RECEIPT BE ACCURATE BECAUSE THIS DATE IS USED BY THE BOARD IN DETERMINING WHETHER THE REQUIREMENTS AS TO TIME HAVE BEEN MET. THE DATE ON THE CARD FILED IN THIS CASE WAS MISLEADING BECAUSE ALTHOUGH IT WAS THE DATE THE CARD WAS SIGNED, IT WAS NOT THE DATE ON WHICH THE MONEY WAS PAID. THAT HAD OCCURRED SOME MONTHS PREVIOUSLY.

AFTER DEALING WITH OTHER WAYS IN WHICH THE MEMBERSHIP EVIDENCE WAS MISLEADING, THE BOARD GOES ON TO SAY:

...AS HAD BEEN POINTED OUT IN MANY DECISIONS, THE BOARD IS DEPENDENT TO A LARGE EXTENT ON THE DOCUMENTARY EVIDENCE FILED BY THE UNION BECAUSE IT WOULD BE AN IMPOSSIBLE TASK FOR IT TO VERIFY THE MEMBERSHIP EVIDENCE FOR EVERY INDIVIDUAL BY CONDUCTING A PERSONAL INQUIRY. IT IS INCUMBENT, THEREFORE, UPON UNIONS TO BE MOST CIRCUMSPECT WITH THE DOCUMENTARY EVIDENCE THEY FILE AND TO MAKE SURE THAT IT IS ACCURATE IN ALL RESPECTS.

17. AS IN CASES DEALING WITH DISCLOSURE REQUIRED BY FORM 8, THIS DECISION REFLECTS THE DEPENDENCE OF THE BOARD ON DOCUMENTARY EVIDENCE OF MEMBERSHIP AND THE CORRESPONDING DUTY ON THE PART OF AN APPLICANT TRADE UNION TO ENSURE THAT SUCH EVIDENCE DOES NOT MISLEAD THE BOARD IN ANY WAY.

18. WE TURN NOW TO CONSIDER THE FORM 8 FILED IN THIS CASE. AS WE FOUND ABOVE, THAT PARTICULAR DOCUMENT IS MISLEADING IN THAT MANY OF THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS FILED WITH THE BOARD AS COLLECTORS WERE NOT THE PERSONS WHO ACTUALLY COLLECTED THE MONEY PAID ON ACCOUNT OF DUES OR INITIATION FEES AND, FURTHER, IN THE SAME NUMBER OF INSTANCES, THE MEMBERS DID NOT PAY THE COLLECTORS WHOSE NAMES APPEAR ON THE RECEIPTS. WHILE THERE MAY NOT HAVE BEEN ANY DELIBERATE ATTEMPT TO MISLEAD THE BOARD, IT IS CLEAR THAT SUCH DOCUMENT WAS IN FACT MISLEADING AND WAS SIGNED BY BELL, A RESPONSIBLE OFFICER OF THE APPLICANT UNION WHO KNEW THE TRUE FACTS. ACCORDING TO BELL'S EVIDENCE HE DID NOT READ FORM 8 CAREFULLY AND ONLY UNDERSTOOD IT TO MEAN THAT A DOLLAR HAD IN FACT BEEN PAID. IF THIS BE THE CASE, THEN AT BEST, IT AMOUNTS TO THAT KIND OF LAXNESS WHICH THE BOARD HAS HELD TO BE INEXCUSABLE IN OTHER CASES. SEE KENORA DISTRICT HOME FOR THE AGED, O.L.R.B. MONTHLY REPORT, APRIL 1960, P. 28, VOLKSWAGEN CANADA LTD., O.L.R.B. MONTHLY REPORT, JUNE 1960, P. 112. NOR CAN WE ACCEPT THE PLEA THAT THE OFFICER IN QUESTION WAS INEXPERIENCED IN LABOUR RELATIONS MATTERS. SURELY SUCH INEXPERIENCE DOES NOT EXCUSE A PERSON FROM READING A DOCUMENT BEFORE SIGNING IT, ESPECIALLY IN A MATTER WHICH HE MUST HAVE KNOWN WAS GOING TO BE BITTERLY CONTESTED.

IN ANY EVENT, IT IS CLEAR THAT HE WAS BEING ASSISTED BY A PERSON EXPERIENCED IN LABOUR RELATIONS MATTERS, IF NOT IN THIS PROVINCE, THEN IN QUEBEC. FURTHER, WE CANNOT OVERLOOK THE FACT THAT THE DOCUMENT WAS PREPARED BY THE APPLICANT'S SOLICITORS AND SIGNED IN THEIR OFFICES. WHILE WE DO NOT KNOW WHAT TRANSPIRED ON THIS OCCASION, AND WHILE WE DO NOT SUGGEST THAT COUNSEL FOR THE APPLICANT HAD ANY KNOWLEDGE OF THE TRUE STATE OF AFFAIRS UNTIL MUCH LATER, NEVERTHELESS, ADVICE WAS AVAILABLE TO BELL IF HE DID NOT FULLY UNDERSTAND WHAT WAS REQUIRED.

19. IN SHORT, THEN, THE FAILURE OF BELL TO DISCLOSE THE FACTS CONCERNING THE RECEIPTS SUBMITTED TO THE BOARD SEEMS TO FALL SQUARELY WITHIN THAT TYPE OF CONDUCT WHICH AS IS SAID IN SO MANY CASES, "MUST WEIGH HEAVILY AGAINST AN APPLICANT". HOWEVER, IT IS ARGUED THAT THE CONDUCT ENVISAGED BY THE CASES REFERRED TO MUST RELATE TO A FAILURE TO DISCLOSE THE FACT THAT A MEMBER DID NOT PAY ANY MONEY, ALTHOUGH A RECEIPT WAS TENDERED SHOWING PAYMENT, AND CASES OF A SIMILAR NATURE. IN THIS CONNECTION, COUNSEL FOR THE APPLICANT REFERRED TO THE GLOBE AND MAIL LIMITED CASE, SUPRA, AND CITED THE FOLLOWING PASSAGE THEREFROM AT P. 1202 (C.L.L.C.):

...WHILE FORMS 8 AND 9 ARE NOT IN AFFIDAVIT FORM, THE BOARD REGARDS THEM AS IMPORTANT DOCUMENTS AND IF THEY CONTAIN FALSE STATEMENTS OR INACCURATE STATEMENTS RESULTING FROM CARELESSNESS ON THE PART OF THE PERSON SIGNING, THIS MAY WELL WEIGH LEAVILY AGAINST AN APPLICANT.

IN COUNSEL'S VIEW, THIS MEANS THAT IF THERE HAS BEEN CARELESSNESS IN COMPLETING FORM 8 (THEN FORM 9) THIS WILL ONLY AFFECT THE WEIGHT TO BE GIVEN THE MEMBERSHIP EVIDENCE BUT WOULD NOT AFFECT ITS ADMISSIBILITY UNLESS THERE HAS BEEN SHOWN TO EXIST "NON-PAYS" OR FORGERIES, AND SINCE NONE HAS BEEN SHOWN TO HAVE OCCURRED AT THIS STAGE, THE BOARD SHOULD NOT REJECT THE APPLICATION BUT OUGHT TO CONTINUE ITS INQUIRY INTO ALL THE ALLEGATIONS MADE WITH RESPECT TO MATTERS OF THAT NATURE.

20. IN THE FIRST PLACE, THE QUOTATION FROM THE GLOBE & MAIL LIMITED CASE DOES NOT IN OUR VIEW STAND FOR ANY DIFFERENT PROPOSITION THAN THAT OUTLINED IN THE CASES REFERRED TO EARLIER. THE WORDS "MAY WELL WEIGH HEAVILY AGAINST AN APPLICANT" APPEAR IN MOST OF THE PASSAGES CITED FROM THOSE DECISIONS. IF ANYTHING, THE PASSAGE MAKES IT CLEAR THAT CARELESSNESS IN COMPLETING FORM 8 MAY JUSTIFY THE BOARD IN DISMISSING AN APPLICATION. FURTHER, THE CASES THEMSELVES DO NOT IN OUR VIEW STAND FOR THE DISTINCTION WHICH COUNSEL SEEKS TO MAKE. ALL MAKE IT CLEAR THAT IT IS WEIGHT, NOT ADMISSIBILITY PER SE, WHICH IS IN ISSUE. HOWEVER, IT IS THE FAILURE TO DISCLOSE WHICH AFFECTS THE WEIGHT WHICH THE BOARD MAY GIVE THE MEMBERSHIP EVIDENCE. THE WEBSTER AIR EQUIPMENT CASE IS QUITE CLEAR ON THIS POINT.

21. WHILE IT MAY BE TRUE THAT IN MOST OF THE CASES THE FAILURE TO DISCLOSE OF THE CARELESSNESS REFERS TO A FAILURE TO DISCLOSE "NON-PAYS" OR "NON-SIGNS", WE DO NOT ACCEPT THE PROPOSITION THAT THESE "IRREGULARITIES" ARE THE ONLY ONES WHICH "MAY WEIGH HEAVILY AGAINST AN APPLICANT" IF NOT DISCLOSED. THE WEBSTER AIR EQUIPMENT CASE SPEAKS OF "A FAILURE TO MAKE

FULL DISCLOSURE OF ALL MATERIAL FACTS". IT IS SURELY NOT OPEN TO ARGUMENT THAT IF THE FORM 8, AS IT DOES, REQUIRES INSTANCES WHERE THE PERSON SIGNING AS COLLECTOR HAS NOT IN FACT RECEIVED THE MONEY TO BE DISCLOSED, THESE ARE NOT MATERIAL FACTS WITHIN THE MEANING OF THAT DECISION.

22. HOWEVER, THE MATTER MAY BE LOOKED AT IN ANOTHER WAY. IF THE TRUE FACTS HAD BEEN DISCLOSED IN THIS CASE, THE BOARD WOULD THEN HAVE BEEN AWARE THAT WHAT THE APPLICANT WAS SEEKING TO DO WAS TO GET OVER THE PROBLEM IT WAS FACED WITH, THAT IS, OF SIGNING UP MEMBERS INTO A NON-EXISTENT ORGANIZATION. WHETHER OR NOT IT WAS SUCCESSFUL IN DOING SO IS NOT THE ISSUE BEFORE US AT THIS STAGE. THE POINT IS THAT THE APPLICANT AND BELL WERE AWARE THAT IT WAS A PROBLEM AND ACTION WAS ACCORDINGLY TAKEN TO OVERCOME IT. THE STEPS TAKEN TO SOLVE THE PROBLEM MUST FALL INTO THE CATEGORY OF "MATERIAL FACTS" SINCE THE APPLICANT STOOD TO WIN OR LOSE ITS CASE ON WHAT IT DID, DEPENDING ON HOW THE BOARD VIEWED THAT ACTION IN THE LIGHT OF ITS ESTABLISHED POLICIES ON THAT QUESTION.

23. FINALLY, ON THE SUBJECT OF DISCLOSURE, WHILE NO SERIOUS ARGUMENT WAS ADVANCED BASED ON THE FACT THAT THE APPLICANT ULTIMATELY MADE FULL DISCLOSURE TO THE BOARD, WE FEEL CONSTRAINED TO MAKE IT CLEAR THAT SUCH DISCLOSURE IS NOT OF THE KIND ENVISAGED IN THE DECISIONS OF THE BOARD. THIS IS NOT A CASE WHERE A RESPONSIBLE OFFICER DISCOVERS AN IRREGULARITY BY A RANK-AND-FILE EMPLOYEE AND IMMEDIATELY BRINGS IT TO THE ATTENTION OF THE BOARD. WHAT WE ARE FACED WITH HERE IS A DISCLOSURE OF FACTS, KNOWN TO RESPONSIBLE PERSONS IN THE UNION, ONLY AFTER ANOTHER PARTY TO THE PROCEEDINGS HAS MADE ALLEGATIONS RESPECTING THE MEMBERSHIP EVIDENCE. IT IS SURELY NO ANSWER TO SAY THAT THE ALLEGATIONS IN THE INTERVENTION DID NOT REVEAL THE PRECISE STATE OF AFFAIRS. IN ANY EVENT, PARTICULARS WERE DEMANDED AND GIVEN, AND THE PARTICULARS WERE REASONABLY CLOSE TO THE TRUTH. EVEN IN THE FACE OF THESE PARTICULARS, NOTHING WAS BROUGHT TO THE ATTENTION OF THE BOARD AT THE FIRST HEARING. HAVING REGARD TO THE EVIDENCE AND ALL THE CIRCUMSTANCES OF THIS CASE, WE ARE DRIVEN TO THE CONCLUSION THAT THE TRUE STATE OF AFFAIRS MIGHT WELL NOT HAVE COME TO OUR ATTENTION SAVE FOR THE INTERVENER'S ALLEGATIONS. WE REITERATE WE DO NOT REGARD THE DISCLOSURES ULTIMATELY MADE HERE AS DISCLOSURES WITHIN THE MEANING OF THE BOARD'S DECISIONS ON THIS POINT. WE HASTEN TO ADD, HOWEVER, THAT NOTHING WE HAVE SAID IS INTENDED TO SUGGEST THAT COUNSEL FOR THE APPLICANT WITHHELD INFORMATION FROM THE BOARD.

24. THERE IS ANOTHER ASPECT OF THE FORM 8 WHICH MUST BE CONSIDERED IN THIS CASE. AS WAS POINTED OUT ABOVE IN DEALING WITH THE NATIONAL STEEL CAR CORPORATION LIMITED CASE, THERE IS A DUTY ON A PERSON COMPLETING FORM 8 TO MAKE INQUIRIES RESPECTING THE MATTERS SET OUT IN THE FORM IF THAT PERSON DOES NOT HAVE PERSONAL KNOWLEDGE OF THOSE MATTERS. IN THE PRESENT CASE, WE ARE NOT SATISFIED THAT BELL MADE THE INQUIRIES HE PURPORTS TO HAVE MADE BY SIGNING THE FORM. IF HE HAD, THEN HE OUGHT TO HAVE KNOWN THE APPROXIMATE NUMBER OF CASES WHERE NEW CARDS AND RECEIPTS WERE ISSUED TO PERSONS WHO COULD NOT PRODUCE THEIR OLD RECEIPTS. THE PLAIN FACT IS THAT ON HIS OWN TESTIMONY HE WAS NOT CONCERNED WITH THE



MATTERS SET OUT IN FORM 8 BUT ONLY WITH WHETHER THE MONEY HAD BEEN PAID. EVEN ON THIS POINT HIS TESTIMONY REVEALS THAT HE WAS PROBABLY NOT IN A POSITION TO MAKE THE STATEMENT HE SAYS HE BELIEVED HE WAS MAKING WHEN HE SIGNED THE FORM. IN HIS OWN WORDS, "THE PERSONS TO WHOM HE DIRECTED HIS INQUIRIES" ALL ASSURED HIM "MORE OR LESS" THAT THE PERSONS TO WHOM NEW CARDS WERE ISSUED HAD PAID. COUNSEL FOR THE INTERVENER CHOSE TO DESCRIBED BELL'S APPROACH TO FORM 8 AS A "CASUAL" ONE. WE ARE INCLINED TO TAKE A SOMEWHAT LESS CHARITABLE VIEW.

25. THERE IS ONE FINAL MATTER WHICH MUST BE CONSIDERED. IN DEALING WITH THE LICARI & SONS CASE, ABOVE, WE POINTED OUT THAT THE DUTY TO DISCLOSE EXTENDS BEYOND THE MATTERS SET FORTH IN THE FORM 8. BOTH THAT CASE AND THE VALLEY TRANSPORTATION COMPANY LIMITED CASE MAKE IT CLEAR THAT THERE IS A DUTY ON THE APPLICANT TO TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED IN THE MEMBERSHIP EVIDENCE, AS WELL AS THE FORM 8, IS TRUE AND ACCURATE. CLEARLY IN THIS CASE THE RECEIPTS FILED ARE NOT TRUE AND ACCURATE. NOT ONLY IS THIS SO WITH RESPECT TO THE COLLECTORS BUT ALSO WITH RESPECT TO THE DATES ON THE RECEIPTS. THESE WERE NOT THE DATES ON WHICH THE MONEY WAS PAID, AND WE THUS HAVE A SITUATION ANALOGOUS TO THAT IN THE LICARI AND SONS CASE. WHILE COUNSEL FOR THE APPLICANT SUGGESTED IN ARGUMENT THAT THE WORDING OF THE RECEIPT DOES NOT IN FACT STATE THAT MONEY WAS PAID ON THE DATE SET OUT IN THE RECEIPT, HAVING REGARD TO THE CONTENTS OF BOTH THE FRONT AND THE BACK OF THE CARD, WE HAVE NO DOUBT THAT ANY REASONABLE PERSON EXAMINING THE WHOLE CARD WOULD CONCLUDE THAT THE MONEY WAS PAID ON THE DATE STATED IN THE RECEIPT. THIS WOULD BE PARTICULARLY TRUE WHERE THE DATES ON THE CARD AND RECEIPT COINCIDE AND THIS WAS THE CASE FOR MOST OF THE CARDS SUBMITTED IN THE PLACE AND STEAD OF THE CARDS SIGNED PRIOR TO MARCH 5.

26. TO RECAPITULATE BRIEFLY, THE FORM 8 FILED BY THE APPLICANT CONTAINS FALSE AND MISLEADING STATEMENTS ON MATERIAL FACTS, AND THE PERSON SIGNING THE FORM 8 KNEW OR OUGHT TO HAVE KNOWN, IF HE HAD EXERCISED PROPER CARE, THAT THE FORM WOULD MISLEAD THE BOARD. THE PERSON IN QUESTION WAS INEXCUSABLY LAX, NOT ONLY IN CONNECTION WITH COMPLETING FORM 8, BUT ALSO IN MAKING THE INQUIRIES ON WHICH THE STATEMENTS IN THE FORM WERE ALLEGEDLY BASED. A SUBSTANTIAL NUMBER OF THE CARDS FILED BY THE APPLICANT CONTAINED FALSE AND MISLEADING STATEMENTS WITH RESPECT TO BOTH THE COLLECTORS AND THE DATES. BUT FOR THE ACTIONS OF THE INTERVENER, THIS STATE OF AFFAIRS MIGHT WELL HAVE NOT BEEN BROUGHT TO OUR ATTENTION, IN WHICH EVENT THE VERY REAL ISSUE AS TO WHETHER THE RE-SIGNING OF CARDS MET THE BOARD'S REQUIREMENTS WITH RESPECT TO MEMBERSHIP WOULD PROBABLY NOT HAVE COME TO LIGHT.

27. COUNSEL FOR THE APPLICANT SUBMITTED THAT THE BOARD SHOULD RELIEVE AGAINST WHAT HE REFERRED TO AS "TECHNICAL ERRORS" AND FAILURE TO DO SO, HE ARGUED, WOULD BE UNDULY BURDENSOME ON THE APPLICANT. IT IS OUR VIEW, HOWEVER, THAT THE SITUATION REVEALED HERE FALLS SQUARELY WITHIN THE PRINCIPLES LAID DOWN IN THE DECISIONS WE HAVE REFERRED TO. ADMITTEDLY, THE RESULT MAY SEEM HARSH TO AN APPLICANT, NOT ONLY THE APPLICANT IN THIS CASE, BUT ALSO, FOR EXAMPLE, THE UNION INVOLVED IN THE NATIONAL STEEL CAR CORPORATION LIMITED CASE. HOWEVER, AS THE CASES SHOW, THE BOARD'S DEPENDENCE ON THE TRUTH AND ACCURACY OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP,



INCLUDING THE FORM 8, FILED BY AN APPLICANT CARRIES WITH IT A CORRESPONDING OBLIGATION ON THE PART OF SUCH APPLICANT TO ENSURE THAT THE EVIDENCE SUBMITTED IS TRUE AND ACCURATE AND DOES NOT MISLEAD THE BOARD. THERE HAS BEEN A CLEAR BREACH OF THAT OBLIGATION IN THIS CASE AND WE HAVE CONCLUDED THAT, IN THE CIRCUMSTANCES DESCRIBED ABOVE, WE ARE UNABLE TO PLACE RELIANCE ON ANY OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT.

28. THE APPLICATION IS ACCORDINGLY DISMISSED.

12914-66-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA  
AFL-CIO-CLC (APPLICANT) V. DAVIDSON RUBBER COMPANY INCORPORATED  
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: L. A. MACLEAN AND LEN COLLINS FOR THE APPLICANT,  
DONALD F. O. HERSEY, BOB HUGUS AND FLOYD McDOWELL FOR THE RESPONDENT, AND  
OWEN B. SHIME FOR A GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE: JUNE 30, 1967.

. . .

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT PORT HOPE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE OR PETITION IN OPPOSITION TO THE APPLICATION. THE DOCUMENT CONTAINED AN OVERLAP OF SIGNATURES OF PERSONS WHO HAD ALSO SIGNED UNION CARDS, WHICH WAS LARGE ENOUGH TO REQUIRE THE BOARD TO INQUIRE INTO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT.

6. HAROLD WALSH GAVE EVIDENCE WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE PETITION. IN THE COURSE OF THE EVIDENCE, HE SWORE THAT NONE OF THE SIGNATURES TO THE PETITION, WHICH HE HAD OBTAINED, WERE PUT ON DURING WORKING HOURS. IN DIRECT CONTRADICTION TO THIS, TWO SIGNATORIES TO THE PETITION TESTIFIED THAT THEY HAD SIGNED THE DOCUMENT DURING WORKING HOURS AT THEIR WORK STATIONS. ONE OF THESE WITNESSES TESTIFIED THAT WALSH APPROACHED HIM PRIOR TO THE HEARING AND TOLD HIM NOT TO MENTION IN HIS TESTIMONY THAT HE HAD SIGNED THE PETITION ON COMPANY'S TIME - TO SAY HE HAD SIGNED IT IN THE WASHROOM ON HIS LUNCH PERIOD. THE WITNESS STATED THAT HE ASKED WALSH WHAT THE PENALTY WAS FOR PERJURY, TO WHICH WALSH REPLIED, "TWO YEARS TO FOURTEEN". SHIRLEY MARKOVSKI TESTIFIED THAT WALSH TOLD HER HE COULD GET TEN YEARS IN JAIL FOR GETTING THE PETITION SIGNED DURING WORKING HOURS AND THAT SHE WAS NOT TO TELL THAT SHE HAD SIGNED AT SUCH A TIME.

7. WE HAVE NO DIFFICULTY AT ALL IN ACCEPTING THE EVIDENCE OF JONES AND MARKOVSKI OVER THAT OF WALSH WHEREVER THERE IS A CONFLICT. NO ATTEMPT WAS MADE TO REPLY TO THE EVIDENCE WITH RESPECT TO WALSH'S EFFORTS TO PERSUADE THESE TWO WITNESSES TO FALSELY TESTIFY ABOUT WHEN THEY SIGNED, ALTHOUGH AN OPPORTUNITY WAS AFFORDED HIM TO DO SO. WE FIND THAT WALSH DELIBERATELY MISLED THE BOARD WITH RESPECT TO THE EVIDENCE RELATING TO THE OBTAINING OF SIGNATURES, AND THAT IN ADDITION TO THAT MOST SERIOUS OFFENCE HE COMMITTED THE FURTHER OFFENCE OF ATTEMPTING TO PERSUADE OTHER WITNESSES TO GIVE FALSE EVIDENCE TO THE BOARD.

8. IN THE FACE OF THIS DISGRACEFUL CONDUCT ON THE PART OF WALSH IT IS QUITE IMPOSSIBLE TO ACCEPT ANY PART OF HIS TESTIMONY WHATSOEVER. HE PURPOSELY MISLED THE BOARD AND HE DELIBERATELY SOUGHT TO HAVE OTHERS DO THE SAME. THE IRONY OF THE SITUATION IS THAT THE IMPROPER CONDUCT WAS DIRECTED TOWARDS A FACTOR WHICH STANDING ALONE, WOULD HAVE HAD NO EFFECT UPON THE VALIDITY OF THE PETITION. AS IT NOW STANDS, HOWEVER, THE BOARD IS COMPELLED TO REJECT WALSH'S EVIDENCE, NOT ONLY WITH RESPECT TO THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED, BUT ALSO WITH RESPECT TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED - A VITAL PART OF THE PETITIONERS' CASE CONCERNING WHICH WALSH ALONE, OF THE WITNESSES CALLED COULD GIVE TESTIMONY. IT WAS INDICATED THAT THE TEXT WAS PREPARED BY WALSH WITH THE ASSISTANCE OF ONE HORSFIELD, A FELLOW EMPLOYEE. HORSFIELD, HOWEVER, WAS NOT CALLED UPON AS A WITNESS.

9. IN THESE CIRCUMSTANCES THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

10. THE RESPONDENT SUBMITTED THAT, BY REASON OF A PLANNED BUILD-UP OF MACHINERY AND EMPLOYEES IN A NEWLY CONSTRUCTED SECTION OF THE PLANT, THE APPLICATION WAS PREMATURE. THE EVIDENCE OFFERED ON THIS POINT ESTABLISHED THAT THERE IS AN INCREASE IN THE NUMBER OF EMPLOYEES TAKING PLACE AND THAT IT WAS PROGRESSING AT THE TIME OF THE HEARING. THE EXPECTATION WAS THAT THE FULL COMPLEMENT OF BETWEEN 330 AND 350 WOULD BE REACHED IN THE EARLY PART OF AUGUST.

11. AT THE DATE OF THE APPLICATION THERE WERE 170 EMPLOYEES IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT. THE APPLICANT HAS FILED MEMBERSHIP CARDS FOR MORE THAN FIFTY-EIGHT PER CENT OF THOSE EMPLOYEES. ALL OCCUPATIONAL CLASSIFICATIONS ARE FILLED AND NO NEW ONES ARE CONTEMPLATED. HAVING REGARD TO THE FOREGOING, THE BOARD IS SATISFIED THAT THE NUMBER OF EMPLOYEES ON THE LISTS FILED WITH THE APPLICATION CONSTITUTE A SUBSTANTIAL AND REPRESENTATIVE SEGMENT OF THE WORK FORCE TO BE EMPLOYED AND THAT THE APPLICATION THEREFORE IS NOT PREMATURE.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

JUNE 30, 1967.

1. I DISSENT.

2. THE EVIDENCE DISCLOSES NO LINK BETWEEN THE RESPONDENT AND THE OBJECTORS WHO SIGNED A PETITION IN OPPOSITION TO THE APPLICATION. MOREOVER, AS NO EMPLOYEES WHO SIGNED THE PETITION HAVE INFORMED THE BOARD OTHERWISE, I MUST CONCLUDE THAT THE PETITION REPRESENTS THE VOLUNTARY WISHES OF THE OBJECTORS AT THE TIME THEY SIGNED IT. EVEN IF FULL WEIGHT WERE GIVEN TO THE COUNTER PETITIONS SUBSEQUENTLY SIGNED BY SOME OF THE OBJECTORS, THE UNION WOULD NOT HAVE UNCONTESTED MEMBERSHIP OF OVER 55% OF THE EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE OF THE APPLICATION, MARCH 30, 1967. IN THE CIRCUMSTANCES, I WOULD HAVE DIRECTED A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

3. LLOYD McDOWELL, GENERAL MANAGER OF THE RESPONDENT'S PLANT AT PORT HOPE, TESTIFIED UNDER OATH THAT A NEW ADDITION TO THE PLANT COMPRISING 20,000 SQUARE FEET OF FLOOR SPACE HAS JUST BEEN COMPLETED. THE ORIGINAL PLANT HAD A FLOOR SPACE OF 35,000 SQUARE FEET.

4. McDOWELL FURTHER TESTIFIED THAT WHEREAS THERE WERE 170 EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE OF THE APPLICATION, MARCH 30, 1967, THERE WERE 218 EMPLOYEES AS OF JUNE 6TH, THE DATE OF THE LAST HEARING. HE STATED THAT THE PLANNED BUILD-UP OF THE NUMBER OF EMPLOYEES WOULD CONTINUE AND IT WAS EXPECTED THAT THE FULL COMPLEMENT OF BETWEEN 330 AND 350 EMPLOYEES WOULD BE REACHED IN THE EARLY PART OF AUGUST, 1967. THIS SHARP RISE IN EMPLOYMENT OVER A FOUR MONTH PERIOD IS EXACTLY THE TYPE OF BUILD-UP CONTEMPLATED UNDER THE BOARD'S POLICY.

5. AS OF THE DATE OF APPLICATION, THE APPLICANT UNION HAD AS MEMBERS 100 OF THE 170 EMPLOYEES IN THE BARGAINING UNIT OR 58.8%. THIS IS ONLY SIX MORE MEMBERSHIP CARDS THAN THE 94 CARDS REQUIRED TO ESTABLISH MEMBERSHIP OF OVER 55% OF THE 170 EMPLOYEES. AS OF THE DATE OF THE LAST HEARING, JUNE 6TH, IT WOULD REQUIRE 120 MEMBERSHIP CARDS FOR OUTRIGHT CERTIFICATION FOR THE 218 EMPLOYEES IN THE BARGAINING UNIT AS OF THAT DATE. AS OF AUGUST NEXT, IT WILL REQUIRE A MINIMUM OF 182 MEMBERSHIP CARDS FOR OUTRIGHT CERTIFICATION FOR THE 330 OR MORE EMPLOYEES EXPECTED TO BE IN THE BARGAINING UNIT AT THAT TIME.

6. ON THE BASIS OF McDOWELL'S EVIDENCE AND THE FACTS ADDUCED THEREFROM, I WOULD HAVE DECLARED THIS TO BE A GENUINE BUILD-UP SITUATION AND FOR THIS REASON ALONE I WOULD HAVE ORDERED A REPRESENTATION VOTE TO BE CONDUCTED FORTHWITH. TO CERTIFY THE UNION AT THIS TIME MEANS THAT 100 EMPLOYEES WHO WERE UNION MEMBERS ON THE DATE OF APPLICATION ARE CHOOSING THE BARGAINING AGENT FOR WELL OVER 200 EMPLOYEES WHO ARE IN THE BARGAINING UNIT AT THE PRESENT TIME AND FOR A MINIMUM OF 330 EMPLOYEES WHO ARE EXPECTED TO BE IN THE UNIT BY EARLY AUGUST. THESE EMPLOYEES ARE BEING DENIED THE RIGHT TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE AS CONTEMPLATED UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT.

12930-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) v. ELLWOOD ROBINSON LIMITED (RESPONDENT) v. ALGOMA  
CONSTRUCTION WORKERS UNION (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT HEARING: H. A. HERRON AND H. QUAID FOR THE APPLICANT,  
W. S. COOK AND J. G. WHITE FOR THE RESPONDENT, J. KELLEHER FOR THE  
INTERVENER.

DECISION OF THE BOARD: JUNE 13, 1967.

1. THE PARTIES AGREED THAT THE RESPONDENT IS ENGAGED IN THE  
OPERATION OF A BUSINESS IN THE CONSTRUCTION INDUSTRY AND THAT THE  
APPLICANT IS A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION  
PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY.

2. THE RESPONDENT AND THE INTERVENER ARGUED THAT THE APPLICANT SHOULD  
NOT BE PERMITTED TO CARVE OUT ITS CRAFT BARGAINING UNIT FROM THE ALL EMPLOY-  
EE UNIT REPRESENTED BY THE INTERVENER.

3. HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE KENT TILE &  
MARBLE CO. LTD. CASE, C.L.L.C. VOL 2, 1960-1964, P. 940; AUTOMATIC FUELS  
LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1966, P. 22, AND FRANKEL  
STRUCTURAL STEEL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P.  
744, AND THE FACT THAT THE PARTIES AGREED THAT THE RESPONDENT IS ENGAGED  
IN THE OPERATION OF A BUSINESS IN THE CONSTRUCTION INDUSTRY AND HAVING  
REGARD TO THE PRACTICE OF CRAFT ORGANIZATION IN THE CONSTRUCTION INDUSTRY,  
IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 6 SUBSECTION 2 OF THE  
LABOUR RELATIONS ACT, THE BOARD FINDS THAT THE APPLICANT IS ENTITLED TO  
ITS CRAFT BARGAINING UNIT IN THIS CASE.

4. THE BOARD ACCORDINGLY CONFIRMS ITS DECISION OF MAY 15TH, 1967  
AND DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE  
TO VOTE IN THE PRE-HEARING REPRESENTATION VOTE TO BE COUNTED AND REPORT  
TO THE BOARD.

13048-67-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION  
1687 (APPLICANT) v. DRAVO OF CANADA LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN AND BOARD MEMBERS  
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: LOU POPOVICH FOR THE APPLICANT AND  
W. S. COOK, J. N. BOYLE FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 13, 1967.

...



3. AT THE HEARING IN THIS MATTER, THE PARTIES MADE REPRESENTATIONS AS TO THE OPERATIONS BEING CARRIED ON BY THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION. SUBSEQUENT TO THE HEARING, THE BOARD BY LETTER DATED MAY 16TH, REQUESTED FURTHER INFORMATION AS TO THE EXACT NATURE OF THE WORK BEING DONE BY THE RESPONDENT AT EACH OF THE FOUR MINES IN THE GEOGRAPHIC AREA SOUGHT BY THE APPLICANT AND THE NAMES OF THE ELECTRICIANS EMPLOYED AT EACH LOCATION AS OF APRIL 28TH, THE DATE OF APPLICATION. THE RESPONDENT BY LETTER DATED MAY 17TH, PROVIDED THE INFORMATION CONCERNED AND A COPY OF THAT LETTER WAS FORWARDED TO THE APPLICANT FOR ITS COMMENTS. BY LETTERS DATED MAY 31ST AND JUNE 5TH, THE APPLICANT OUTLINED ITS POSITION WITH RESPECT TO THE CONTENTS OF THE RESPONDENT'S LETTER. ON THE BASIS OF THE INFORMATION NOW BEFORE THE BOARD, WE ARE OF OPINION THAT IT IS NOT NECESSARY, NOR WOULD ANY USEFUL PURPOSE BE SERVED IN APPOINTING AN EXAMINER TO MAKE FURTHER INQUIRIES WITH RESPECT TO THE RESPONDENT'S OPERATIONS AS REQUESTED BY THE APPLICANT.

4. THE RESPONDENT STATES, AND IT IS NOT DISPUTED BY THE APPLICANT, THAT THE RESPONDENT HAS BEEN ENGAGED IN THE PRODUCTION OF ORE AT COPPER CLIFF NORTH #1 MINE FOR A PERIOD OF THREE YEARS AND AT THE COPPER CLIFF NORTH #2 MINE SINCE APRIL 1ST OF THIS YEAR. ACCORDING TO THE EVIDENCE, PRIOR TO THE COMMENCEMENT OF PRODUCTION OPERATIONS AT BOTH MINES, THE CONSTRUCTION OF THE SHAFTS HAD BEEN COMPLETED AND THE REQUIRED ELECTRICAL EQUIPMENT INSTALLED. WHILE CONCEIVABLY SOME OF THE JOBS THAT WERE BEING DONE BY THE ELECTRICIANS AT THE TWO MINES AS OF THE DATE OF APPLICATION BY THEMSELVES MIGHT APPEAR TO BE CONSTRUCTION WORK, VIEWED IN THE CONTEXT OF THE PRODUCTION OPERATIONS BEING CARRIED ON BY THE RESPONDENT IN THE MINES, WE ARE SATISFIED THAT, ON THE DATE OF APPLICATION, THE WORK OF THE ELECTRICIANS EMPLOYED AT COPPER CLIFF NORTH #1 AND #2 MINES, IN REALITY, WAS MAINTENANCE WORK WHICH WAS AN INTEGRAL PART OF THE RESPONDENT'S PRODUCTION OPERATIONS.

5. THE BOARD ACCORDINGLY FINDS THAT THIS APPLICATION AS IT RELATES TO THE ELECTRICIANS EMPLOYED BY THE RESPONDENT AT COPPER CLIFF NORTH #1 AND #2 MINES IS NOT AN APPLICATION FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT THE ELECTRICIANS EMPLOYED BY THE RESPONDENT AT THE COPPER CLIFF NORTH #1 AND #2 MINES, WHOM THE BOARD HAS FOUND WERE ENGAGED IN MAINTENANCE WORK AS OF THE DATE OF APPLICATION, DO NOT, BY THEMSELVES, CONSTITUTE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. ALTHOUGH IT IS NOT NECESSARY AND THE BOARD DOES NOT PROPOSE TO DETERMINE A BARGAINING UNIT, IT WOULD APPEAR THAT "ALL EMPLOYEES" AT EACH OF THE MINES ENCOMPASSING THE ELECTRICIANS EMPLOYED AT THE MINES WOULD BE APPROPRIATE UNITS FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN ANY UNIT OR UNITS WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. THE APPLICATION, AS IT RELATES TO THE ELECTRICIANS EMPLOYED BY THE RESPONDENT AT COPPER CLIFF NORTH #1 AND #2 MINES, THEREFORE, IS DISMISSED.

9. THE EVIDENCE WITH RESPECT TO THE STOBIE AND COLEMAN MINES, HOWEVER, IS THAT AS OF THE DATE OF APPLICATION, THE RESPONDENT WAS ENGAGED IN THE CONSTRUCTION AND DEVELOPMENT OF MINE SHAFTS AND THAT AT THE KIRKWOOD MINE, ALTHOUGH THE SHAFT WAS COMPLETED, THE RESPONDENT WAS MAKING LATERAL DRIVES TOWARD THE ORE BODY. IN LIGHT OF THE NATURE OF THE WORK BEING DONE, WE ARE SATISFIED THAT THE RESPONDENT WAS OPERATING IN THE CONSTRUCTION BUSINESS AT THESE LOCATIONS AND THAT THE THREE ELECTRICIANS EMPLOYED AT THE MINES WERE DOING CONSTRUCTION WORK.

10. THE BOARD ACCORDINGLY FINDS THAT THIS APPLICATION AS IT RELATES TO THE ELECTRICIANS EMPLOYED BY THE RESPONDENT AT THE STOBIE, COLEMAN AND KIRKWOOD MINES IS AN APPLICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

11. THE BOARD FURTHER FINDS THAT ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES EMPLOYED BY THE RESPONDENT IN ITS CONSTRUCTION OPERATIONS WITHIN A RADIUS OF THIRTY-FIVE MILES OF THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD FINDS THAT THERE WERE THREE PERSONS IN THE BARGAINING UNIT AS OF THE DATE OF APPLICATION, ALL OF WHOM ARE INCLUDED IN THE UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP FOR TWO OF THESE THREE PERSONS. THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY (FORM 54) FILED IN THIS MATTER, HOWEVER, ONLY RELATES TO THE EVIDENCE OF MEMBERSHIP FOR ONE OF THESE TWO PERSONS. THE RESULT THEREFORE IS THAT ALTHOUGH THE APPLICANT MAY HAVE TWO OF THE THREE BARGAINING UNIT EMPLOYEES AS MEMBERS, HAVING FAILED TO COMPLY WITH THE REQUIREMENTS OF SECTION 68 OF THE BOARD'S RULES OF PROCEDURE AND REGULATIONS WITH RESPECT TO ONE OF THEM, THE BOARD IS NOT PREPARED TO ACCEPT THE EVIDENCE OF MEMBERSHIP SUBMITTED ON BEHALF OF THAT PERSON. THE APPLICANT, THEREFORE, FOR THE PURPOSES OF THE BOARD, ONLY HAS EVIDENCE OF MEMBERSHIP FOR ONE OF THE THREE PERSONS IN THE BARGAINING UNIT.

13. ALTHOUGH IN VIEW OF THE MEMBERSHIP POSITION OF THE APPLICANT IT IS NOT NECESSARY TO DO SO, WE WOULD POINT OUT, THAT IN ONLY TWO INSTANCES DO THE MEMBERSHIP CARDS FILED BY THE APPLICANT INDICATE MEMBERSHIP IN THE APPLICANT LOCAL UNION 1687. THE REMAINING MEMBERSHIP CARDS ONLY INDICATE MEMBERSHIP IN THE INTERNATIONAL UNION. THE ACCOMPANYING RECEIPTS ATTACHED TO THE MEMBERSHIP CARDS, HOWEVER, SHOW THAT THE PAYMENT OF THE \$1.00 INITIATION FEE IS FOR MEMBERSHIP IN LOCAL UNION 1687. IT IS ONLY THE RECEIPTS, THEREFORE, RATHER THAN THE MEMBERSHIP CARDS THEMSELVES THAT SATISFY THE BOARD THAT THE PERSONS ON WHOSE BEHALF THE EVIDENCE OF MEMBERSHIP WAS SUBMITTED ARE MEMBERS OF THE APPLICANT.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

15. THE APPLICATION AS IT RELATES TO THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 11 ACCORDINGLY IS DISMISSED.

13066-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ECSTALL MINING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. H. OSLER, Q.C., FOR THE APPLICANT,  
PURDY CRAWFORD FOR THE RESPONDENT, AND W. I. C. BINNIE FOR A  
GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JUNE 5, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHICH WAS TO BE HEARD ON MAY 24TH, 1967. AT ABOUT 3:00 P.M. IN THE AFTERNOON OF MAY 23RD, THE APPLICANT ADVISED THE DEPUTY REGISTRAR BY TELEPHONE THAT IT WOULD APPLY FOR LEAVE TO WITHDRAW THE APPLICATION. THE DEPUTY REGISTRAR NOTIFIED THE RESPONDENT'S SOLICITOR AND THE SOLICITOR FOR THE GROUP OF EMPLOYEES OF THE TELEPHONED MESSAGE FROM THE APPLICANT. BOTH PARTIES ADVISED THAT THEY OBJECTED TO LEAVE BEING GRANTED, AND THE SOLICITOR FOR THE RESPONDENT STATED THAT HE WOULD APPEAR ON MAY 24TH TO MAKE REPRESENTATIONS WITH RESPECT TO ANY APPLICATION FOR LEAVE TO WITHDRAW. AT THIS TIME OFFICERS OF THE RESPONDENT AND REPRESENTATIVES OF THE OBJECTORS HAD ALREADY REACHED TORONTO FROM TIMMINS.

2. THE FORMAL REQUEST FOR LEAVE TO WITHDRAW IN THE FORM OF THE FOLLOWING TELEGRAM WAS RECEIVED BY THE BOARD AT 4:00 P.M. ON MAY 23RD, 1967:-

A.M. BRUNSKILL

REGISTRAR ONTARIO LABOUR RELATIONS BOARD

8 YORK ST TORONTO ONT

RE YOUR FILE NO 13066-67-R ECSTALL MINING LTD THE  
APPLICANT RESPECTFULLY REQUESTS LEAVE OF THE BOARD  
TO WITHDRAW THIS APPLICATION

LORNE INGLE  
UNITED STEELWORKERS OF AMERICA.

3. THE SOLICITOR FOR THE GROUP OF EMPLOYEES WAS ADVISED OF THE RECEIPT AND CONTENTS OF THE TELEGRAM IMMEDIATELY. IN VIEW OF THE FACT THAT THE RESPONDENT'S SOLICITOR HAD INDICATED THAT HE WOULD APPEAR TO MAKE REPRESENTATIONS ON THE 24TH IN ANY EVENT, IT WAS NOT DEEMED NECESSARY TO ADVISE HIM OF THE RECEIPTS OF THE FORMAL APPLICATION FOR WITHDRAWAL.

4. ON MAY 24TH THE BOARD HEARD REPRESENTATIONS FROM ALL PARTIES AS TO WHETHER LEAVE TO WITHDRAW SHOULD BE GRANTED OR THE APPLICATION DISMISSED. COUNSEL FOR THE OBJECTORS SUBMITTED THAT, IN ADDITION TO DISMISSING THE APPLICATION, THE BOARD SHOULD IMPOSE A SIX MONTHS BAR AGAINST A FRESH APPLICATION. COUNSEL FOR THE RESPONDENT CONCURRED IN THIS SUBMISSION.

5. HAVING REGARD TO THE CIRCUMSTANCES OF THIS CASE, AND PARTICULARLY TO THE FACT THAT WITNESSES FOR THE RESPONDENT AND THE GROUP OF EMPLOYEES HAD ALREADY BEEN PUT TO THE COST OF COMING TO TORONTO BEFORE THE REQUEST WAS MADE, THE APPLICANT'S REQUEST FOR WITHDRAWAL IS DENIED AND THE APPLICATION IS ACCORDINGLY DISMISSED.

6. IT IS THE POLICY OF THE BOARD TO GIVE CONSIDERATION TO THE IMPOSITION OF A BAR ONLY IN CASES WHERE A REPRESENTATION VOTE IS INVOLVED. THE BOARD, THEREFORE, IS NOT PREPARED TO IMPOSE A BAR IN THE PRESENT CASE.

13075-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. CANADIAN INDUSTRIES LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: JOHN PARKER AND H. STEDMAN FOR THE APPLICANT, R. J. GALLIVAN AND A. K. CAMERON FOR THE RESPONDENT, EARL J. CALANDRO AND WILLIAM FULLER FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 15, 1967.

1. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF STATIONARY ENGINEERS OF THE RESPONDENT AND IN SO DOING SEEKS TO CARVE OUT A SEPARATE BARGAINING UNIT OF STATIONARY ENGINEERS FROM AN INDUSTRIAL UNIT FOR WHICH THE INTERVENER IS THE EXISTING BARGAINING AGENT.

2. THE STATIONARY ENGINEERS OF THE RESPONDENT HAVE CONSTITUTED AN INTEGRAL COMPONENT OF THIS INDUSTRIAL UNIT FOR APPROXIMATELY TWENTY YEARS. THE RESPONDENT AND THE INTERVENER WERE PARTIES TO A COLLECTIVE AGREEMENT SINCE 1947 WHICH COLLECTIVE AGREEMENT PROVIDED FOR A SEPARATE WAGE CLASSIFICATION FOR SHIFT ENGINEERS AND ALSO PROVIDED SPECIFIC PROVISIONS APPLICABLE TO THE SHIFT ENGINEERS. THE CURRENT COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT AND THE INTERVENER ALSO CONTAINS A SEPARATE WAGE SCALE



COVERING SHIFT ENGINEERS. UNDER THE LAST COLLECTIVE AGREEMENT THE SHIFT ENGINEERS NOT ONLY OBTAINED THE GENERAL INCREASE WHICH WAS GRANTED TO OTHER EMPLOYEES BUT OBTAINED A SPECIFIC ALLOWANCE APPLICABLE ONLY TO STATIONARY ENGINEERS AND AN ADJUSTMENT ON SUNDAY PREMIUM PAY TO WHICH ONLY THE SHIFT ENGINEERS ARE ENTITLED. STATIONARY ENGINEERS HAVE THEIR OWN SHOP STEWARD PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT AND CAN AND HAVE AVAIL THEMSELVES OF THE PLANT-WIDE SENIORITY PROVISIONS OF THE COLLECTIVE AGREEMENT.

3. HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE LILY CUP CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1961, P. 370, THE CANADIAN FOUNDRIES AND FORGINGS CASE, 1961, C.C.H. CANADIAN LABOUR LAW REPORTER 416,203, C.L.S. 76-753, AND AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, BOARD FILE NO. 1501-61-R, THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER AS EVIDENCED BY THE LENGTH OF CONTINUOUS REPRESENTATIONS BY THE INTERVENER OF THE STATIONARY ENGINEERS, THE SEPARATE WAGE SCHEDULES AND CLASSIFICATIONS FOR STATIONARY ENGINEERS IN THE COLLECTIVE AGREEMENT, THE COMMUNITY OF INTEREST WITH OTHER EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT INCLUDING SENIORITY RIGHTS, AND THE OPPOSITION TO THE APPLICATION BY THE RESPONDENT AND THE INTERVENER, THE BOARD IS OF OPINION THAT IT SHOULD EXERCISE ITS DISCRETION IN THIS MATTER AND NOT APPLY SECTION 6(2) OF THE LABOUR RELATIONS ACT IN FAVOUR OF THE APPLICANT, AND ACCORDINGLY FINDS THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE.

4. THE APPLICATION IS THEREFORE DISMISSED.

13112-67-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 756 - A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. DOMINION SPORT-SERVICE LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT HEARING: RICHARD THIESSEN AND TERRY MEAGHER FOR THE APPLICANT, AND B. H. STEWART FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 8, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE FORT ERIE RACETRACK. THE APPLICATION WAS MADE ON SATURDAY, MAY 13, 1967, WHICH WAS THE LAST DAY OF THE RACING SEASON AT FORT ERIE. NOTICE OF THE APPLICATION WAS GIVEN TO THE RESPONDENT IN THE USUAL COURSE, AND POSTING OF THE NOTICE IN FORM 5 WAS DIRECTED. THE RESPONDENT ARGUES THAT THE NOTICE TO EMPLOYEES (FORM 5) WAS OF NO EFFECT SINCE THERE WERE NO EMPLOYEES OF THE RESPONDENT ON THE PREMISES DURING THE TIMES THE NOTICE WAS POSTED. IT IS ANTICIPATED THAT THE NEXT RACING SEASON WILL COMMENCE IN JULY 1967, AT FORT ERIE. FOR THESE REASONS, THE RESPONDENT HAS REQUESTED EXTENSION OF THE TERMINAL DATE.

2. HAVING REGARD TO THE SPECIAL CIRCUMSTANCES OF THIS CASE, IT IS OUR VIEW THAT THERE HAS NOT BEEN SUFFICIENT NOTICE TO THE EMPLOYEES AFFECTED BY

THIS APPLICATION. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO FIX A NEW TERMINAL DATE IN THIS MATTER IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2 OF THE BOARD'S RULES OF PROCEDURE AND TO EFFECT THE SERVICES PROVIDED FOR IN THESE RULES. REFERENCE MAY BE MADE TO THE McMASTER UNIVERSITY CASE, BOARD FILE NO. 5146-62-R.

3. AT THE HEARING OF THIS MATTER THE BOARD HEARD THE REPRESENTATIONS OF THE PARTIES RELATING TO ALL ASPECTS OF THIS CASE, WITHOUT PREJUDICE TO THE RIGHTS OF THE PARTIES TO MAKE FURTHER REPRESENTATIONS IF CIRCUMSTANCES SHOULD JUSTIFY SUCH. THE BOARD PROPOSES, THEREFORE, TO DISPOSE OF THIS MATTER ON THE EVIDENCE BEFORE IT WITHOUT FURTHER HEARING AFTER THE EXPIRY OF THE NEW TERMINAL DATE, UNLESS THERE IS OBJECTION TAKEN TO THE APPLICATION OR UNLESS SUFFICIENT REASON FOR A FURTHER HEARING APPEARS.

13266-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 493 (APPLICANT v. GERARD CONSTRUCTION (ONTARIO) LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS  
R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: JUNE 26, 1967.

1. THE NAME OF THE RESPONDENT APPEARING IN THE APPLICATION AS FILED BY THE APPLICANT IS "GERRARD BUILDERS LTD. GENERAL CONTRACTORS". ACCORDING TO THE APPLICANT THIS WAS THE SIGN ON THE COMPANY OFFICE IN TIMMINS. THE RESPONDENT HAS INFORMED THE BOARD THAT UP UNTIL MARCH 7, 1967, ITS CORRECT NAME WAS GERARD BUILDERS OF NORTH BAY LIMITED AND ON THAT DATE ITS NAME WAS CHANGED BY SUPPLEMENTARY LETTERS PATENT TO GERARD CONSTRUCTION (ONTARIO) LIMITED. IN ITS REPLY, THE RESPONDENT SUBMITS THAT THE APPLICATION SHOULD BE DENIED BECAUSE THE APPLICANT HAS NOT USED THE RESPONDENT'S PROPER CORPORATE NAME AND HAS ALSO MISPELLED IT. THE RESPONDENT CONSENTS TO THE APPLICATION BEING DISPOSED OF WITHOUT A HEARING BY THE BOARD.

2. THE BOARD'S NOTICE TO EMPLOYEES (FORM 52) WAS PROPERLY POSTED. THE RESPONDENT FILED A PROPERLY COMPLETED REPLY TOGETHER WITH A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES. IT IS CLEAR THERE IS NO CONFUSION WITH RESPECT TO THE JOB SITE OR THE EMPLOYEES AFFECTED BY THE APPLICATION. THERE IS NO SUGGESTION THAT ANYONE HAS BEEN MISLED BY THE NAME USED BY THE APPLICANT.

3. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS AND TO THE PROVISIONS OF SECTION 78 OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS IS A PROPER CASE IN WHICH TO AMEND THE NAME OF THE RESPONDENT. ACCORDINGLY, THE NAME "GERRARD BUILDERS LTD. GENERAL CONTRACTORS" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "GERARD CONSTRUCTION (ONTARIO) LIMITED".

THE BOARD NOTES THAT IT IS ALWAYS OPEN TO PERSONS AFFECTED BY THIS DECISION TO REQUEST REVIEW UNDER SECTION 79(1) OF THE ACT IF IT IS CONSIDERED THAT THE BOARD HAS ERRED IN ANY WAY.

INDEXED ENDORSEMENTS - TERMINATION

12846-66-R: FRANK GREENE AND GORDON YAKE (APPLICANTS) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 141 (RESPONDENT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (INTERVENER).

BEOFRE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: FRANK GREENE AND GORDON YAKE FOR THE APPLICANTS,  
W. W. TILLER, ROBERT L. WILSON AND TOM CORRIGAN FOR THE RESPONDENT, AND  
W. S. COOK, M. W. INKMAN AND W. C. P. BALDWIN FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 12, 1967.

1. THIS APPLICATION FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT, BROUGHT UNDER SECTION 43 OF THE LABOUR RELATIONS ACT, IS DATED MARCH 11TH, 1967. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES CONCERNED ON MARCH 11TH, 1966. ON THE SURFACE THEN, THE APPLICATION WOULD APPEAR TO BE TIMELY. HOWEVER, THE APPLICANTS SENT THE APPLICATION BY REGISTERED MAIL, ADDRESSED TO THE BOARD AT TORONTO, ON THE 10TH OF MARCH, 1967, SO THAT, HAVING REGARD TO THE PROVISIONS OF SECTION 85(2) OF THE LABOUR RELATIONS ACT, THE APPLICATION MUST BE DEEMED TO HAVE BEEN MADE ON THAT DATE AND IS THEREFORE UNTIMELY. THE APPLICATION IS ACCORDINGLY DISMISSED. THE RESPONDENT, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 141, ACCORDINGLY CONTINUES TO BE THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT WAS CERTIFIED.

2. BY WAY OF REPLY TO THE APPLICATION, THE INTERVENER SUBMITTED A DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT BETWEEN THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED AND LOCAL 847, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA WITH RESPECT TO EMPLOYEES IN THE BARGAINING UNIT FOR WHICH LOCAL 141 IS THE BARGAINING AGENT. THE AGREEMENT WAS TO BE EFFECTIVE THE 4TH DAY OF JANUARY, 1967.

3. EVIDENCE WAS ADDUCED TO SHOW THAT MEMBERSHIP IN LOCAL 141 HAD BEEN TRANSFERRED TO LOCAL 847 BY DIRECTION OF THE INTERNATIONAL EXECUTIVE BOARD OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS. HOWEVER EFFECTIVE THE TRANSFER OF MEMBERSHIP MAY HAVE BEEN, IT DOES NOT DIVEST LOCAL 141 OF ITS STATUS AS BARGAINING AGENT FOR THE EMPLOYEES CONCERNED, NOR CONFER THOSE BARGAINING RIGHTS ON LOCAL 847. THE PURPORTED COLLECTIVE AGREEMENT THEREFORE WOULD APPEAR TO HAVE NO VALIDITY SINCE, TO REPEAT, LOCAL 141 AND NOT LOCAL 847 IS THE BARGAINING AGENT FOR THE EMPLOYEES CONCERNED.

12872-66-R: RONALD JAMES ROBERTS (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (RESPONDENT).

BEFORE: C. H. BROWN, Q.C., VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: J. C. VICTOR FOR THE APPLICANT,  
T. E. ARMSTRONG FOR THE RESPONDENT, R. D. HUMPHREYS, Q.C., AND  
R. H. DANIEL FOR OSHAWA ENGINEERING & WELDING COMPANY LIMITED.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN:  
JUNE 8, 1967.

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1. THE APPLICANT IS APPLYING TO THE BOARD, PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT, FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS A UNIT OF EMPLOYEES OF OSHAWA ENGINEERING & WELDING COMPANY LIMITED (HEREINAFTER REFERRED TO AS THE COMPANY) AT OSHAWA. THE APPLICANT FILED WITH HIS APPLICATION A DOCUMENT (HEREINAFTER REFERRED TO AS THE PETITION) EXPRESSING SUPPORT FOR THE APPLICATION SIGNED BY EIGHTEEN PERSONS PURPORTING TO BE EMPLOYEES OF THE COMPANY.

2. THE RESPONDENT WAS CERTIFIED BY THIS BOARD ON MARCH 14TH, 1966 AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE COMPANY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. THE COMPANY AND THE RESPONDENT THEREUPON ENTERED INTO NEGOTIATIONS FOR A COLLECTIVE AGREEMENT. ALTHOUGH THE PARTIES UTILIZED AND EXHAUSTED THE CONCILIATION PROCEDURES PROVIDED UNDER THE ACT, THEY WERE UNABLE TO EFFECT A COLLECTIVE AGREEMENT. ON SEPTEMBER 7TH, 1966, THE RESPONDENT CALLED A STRIKE OF THE EMPLOYEES OF THE COMPANY AT ITS PLANT AT OSHAWA. TWENTY-THREE EMPLOYEES OF THE COMPANY REPORTED FOR WORK AT THE PLANT ON THAT DATE AND ALL OF THEM WALKED OFF THEIR JOBS. THE COMPANY IMMEDIATELY SHUT DOWN ITS PLANT AND HAS NOT RESUMED PRODUCTION OPERATIONS SINCE SEPTEMBER 7TH, 1966.

3. FIVE OF THE TWENTY-THREE EMPLOYEES WHO WALKED OFF THE JOB ON SEPTEMBER 7TH IMMEDIATELY ENGAGED IN PICKETING ACTIVITIES AT THE COMPANY'S PREMISES. THE OTHER EIGHTEEN EMPLOYEES, HOWEVER, DID NOT THEN OR AT ANY SUBSEQUENT TIME TAKE PART IN ANY PICKETING OR OTHER ACTIVITIES IN SUPPORT OF THE RESPONDENT UNION. IT IS THESE EIGHTEEN EMPLOYEES WHO ARE THE SIGNATORIES TO THE PETITION FILED IN SUPPORT OF THE INSTANT APPLICATION.

4. ON THE DAY THAT THE STRIKE COMMENCED, R. H. DANIEL, THE ASSISTANT MANAGER OF THE COMPANY, WAS ASKED BY RONALD ROBERTS, THE APPLICANT, TO MEET WITH THE ABOVE REFERRED TO EIGHTEEN EMPLOYEES AT ROBERT'S HOME. DANIEL ATTENDED AT THIS MEETING, AND AT THE REQUEST OF THE EMPLOYEES OUTLINED THE COURSE OF NEGOTIATIONS THAT HAD TRANSPIRED BETWEEN THE COMPANY AND THE RESPONDENT PRIOR TO THE STRIKE. ON THAT OCCASION THE EIGHTEEN EMPLOYEES PRESENT AT THE MEETING INFORMED DANIEL THAT SINCE THE COMPANY HAD SHUT DOWN ITS OPERATIONS THEY COULD NOT REMAIN IN THE EMPLOY OF THE COMPANY UNLESS THE COMPANY WAS PREPARED TO CONTINUE TO PAY TO THEM A PERCENTAGE OF THEIR WAGES. THE EMPLOYEES



SPECIFICALLY PROPOSED THAT THE COMPANY PAY TO THEM SEVENTY-FIVE PER CENT OF THE WAGES THAT THEY HAD BEEN RECEIVING AT THE TIME THE STRIKE COMMENCED. DANIEL MAKE NO COMMITMENT AT THE MEETING BUT SUBSEQUENTLY THE EIGHTEEN EMPLOYEES WERE INFORMED THAT THE COMPANY WAS PREPARED TO COMPLY WITH THEIR PROPOSAL. ALTHOUGH NO TIME PERIOD WAS STIPULATED ALL EIGHTEEN OF THE EMPLOYEES HAVE RECEIVED SEVENTY-FIVE PER CENT OF THEIR WAGES FROM THE TIME THE STRIKE COMMENCED TO THE DATE OF THE LAST HEARING OF THE BOARD IN THIS MATTER ON MAY 18TH, 1967. THEY WERE, OF COURSE, RECEIVING THE ABOVE PAYMENTS AS OF MARCH 16TH, 1967, THE DATE OF THE MAKING OF THE INSTANT APPLICATION.

5. IN ADDITION TO THE TWENTY-THREE PERSONS WHO WERE AT WORK AT THE COMPANY'S PLANT ON SEPTEMBER 7TH, 1966, ANOTHER TWENTY-THREE PERSONS WHO HAD PREVIOUSLY WORKED FOR THE COMPANY WERE LAID-OFF WORK FOR AN INDEFINITE PERIOD IN THE MONTHS OF JUNE AND JULY OF 1966 BECAUSE OF A LACK OF WORK. THE TESTIMONY OF DANIEL IS THAT THE COMPANY HAD BEEN CUTTING BACK PRODUCTION DURING THE SUMMER OF 1966 AND THAT IN MID-AUGUST GENERAL MOTORS, WHICH IS VIRTUALLY THE SOLE BUYER OF THE COMPANY'S PRODUCTS, INFORMED THE COMPANY OF A SUBSTANTIAL DECREASE IN ITS REQUIREMENTS FROM THE COMPANY. ACCORDING TO DANIEL, UPON RECEIVING THIS INFORMATION IT WAS NECESSARY FOR THE COMPANY TO FURTHER CONTRACT ITS WHOLE PRODUCTION SCHEDULE. DANIEL TESTIFIED THAT IT WAS MAINLY THIS CONSIDERATION THAT PROMPTED THE COMPANY ON AUGUST 29TH, 1966 TO SEND LETTERS, BY REGISTERED MAIL, OVER HIS SIGNATURE, TO EACH OF THE ABOVE MENTIONED TWENTY-THREE EMPLOYEES WHO WERE ON LAY-OFF, ADVISING THEM THAT THE WORK IN THE SHOP HAD NOT MATERIALIZED AS EXPECTED AND THAT ACCORDINGLY THEIR EMPLOYMENT WITH THE COMPANY WAS TERMINATED.

6. THE EVIDENCE OF SOME NINE OF THOSE TWENTY-THREE PERSONS WHO RECEIVED THE REGISTERED LETTERS FROM THE COMPANY TERMINATING THEIR EMPLOYMENT IS THAT SHORTLY AFTER THEIR RECEIPT OF THE LETTER THEY RECEIVED TELEPHONE CALLS EITHER FROM DANIEL OR STANLEY POLOZ, THE SUPERINTENDENT OF THE COMPANY, ADVISING THEM THAT THEY WOULD BE RECALLED TO WORK WITHIN PERIODS RANGING FROM THE END OF SEPTEMBER OF 1966 TO EARLY IN 1967. BOTH DANIEL AND POLOZ IN THEIR TESTIMONY DENIED HAVING TELEPHONED ANY OF THE NINE PERSONS CALLED AS WITNESSES BY THE RESPONDENT SUBSEQUENT TO THE MAILING OF THE REGISTERED LETTERS OF AUGUST 29TH.

7. ALBERT TAYLOR, THE PRESIDENT OF LOCAL 222 OF THE RESPONDENT UNION, TESTIFIED THAT HE MET WITH DANIEL AND THE COMPANY'S SOLICITOR ON SEPTEMBER 6TH, 1966. TAYLOR'S EVIDENCE IS THAT ON THAT OCCASION, THE COMPANY REPRESENTATIVES AGREED TO RESCIND THE LETTERS OF AUGUST 29TH AND TO MAIL A FURTHER LETTER TO THE EMPLOYEES CONCERNED ADVISING THEM THAT THEY WOULD BE RECALLED IN ACCORDANCE WITH THE SENIORITY PROVISIONS OF THE COLLECTIVE AGREEMENT. DANIEL IN HIS EVIDENCE DENIED THAT SUCH AN ARRANGEMENT HAD BEEN AGREED UPON AT THAT MEETING. ON THE EVIDENCE, WE FIND THAT THE PARTIES DID NOT MAKE AN AGREEMENT AS OUTLINED ABOVE AND IN FACT NO FURTHER LETTERS WERE SENT TO THE TWENTY-THREE PERSONS IN QUESTION.

8. AS WAS MENTIONED EARLIER, THE INSTANT APPLICATION WAS MADE ON MARCH 16TH, 1967. THE BOARD MUST FIRST DETERMINE THE NUMBER OF PERSONS

WHO ARE TO BE CONSIDERED AS MEMBERS OF THE BARGAINING UNIT FOR PURPOSES OF THE COUNT IN ORDER TO ESTABLISH WHETHER THE EIGHTEEN PERSONS WHO SIGNED THE PETITION IN SUPPORT OF THE APPLICATION REPRESENT THE PREREQUISITE FIFTY PER CENT OF THE EMPLOYEES NECESSARY FOR THE APPLICATION TO HAVE ANY POSSIBILITY OF SUCCEEDING. WE WOULD POINT OUT INITIALLY THAT IN APPLICATIONS BOTH FOR CERTIFICATION AND TERMINATION OF BARGAINING RIGHTS THE USUAL PRACTICE OF THE BOARD IS THAT WHEN EMPLOYEES ARE ABSENT FROM WORK ON THE DATE OF THE MAKING OF THE APPLICATION AND EITHER HAVE NOT BEEN AT WORK FOR A PERIOD OF A MONTH PRIOR TO THE DATE OF APPLICATION OR NOT EXPECTED TO RETURN TO WORK WITHIN A PERIOD OF A MONTH AFTER THE DATE OF APPLICATION, THESE EMPLOYEES ARE NOT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT.

9. IN THE INSTANT CASE, THE BOARD IS CONFRONTED WITH A MOST UNUSUAL SITUATION, THE COMPANY HAVING CLOSED DOWN ITS OPERATIONS IMMEDIATELY AFTER THE COMMENCEMENT OF THE STRIKE. SECTION 43(1) OF THE ACT PROVIDES, IN PART, THAT IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH AN EMPLOYER WITHIN ONE YEAR AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY APPLY TO THE BOARD FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE TRADE UNION. IN THE INSTANT CASE, THE APPLICANT IN COMPLIANCE WITH THE SUBSECTION MADE HIS APPLICATION AFTER THE EXPIRATION OF A YEAR FROM THE DATE OF CERTIFICATION AND DURING THE YEAR PERIOD NO COLLECTIVE AGREEMENT HAD BEEN ENTERED INTO BY THE COMPANY AND THE RESPONDENT. FOR THE BOARD IN THIS SITUATION TO SUBSCRIBE TO ITS USUAL POLICY WOULD HAVE THE EFFECT OF DENYING TO THE BARGAINING UNIT EMPLOYEES FOR AN INDEFINITE AND POSSIBLY EXTENDED PERIOD, THE ENTITLEMENT GIVEN TO THEM UNDER SUBSECTION (1) TO DETERMINE WHETHER A MAJORITY OF THE EMPLOYEES WISH TO RETAIN OR REJECT THEIR BARGAINING AGENT. DURING SUCH A PERIOD, MOREOVER, THE EMPLOYEES WOULD HAVE NO OPPORTUNITY TO CHOOSE A NEW BARGAINING AGENT AND BY THE SAME TOKEN, OTHER TRADE UNIONS WOULD BE DENIED THE POSSIBILITY OF ACQUIRING BARGAINING RIGHTS FOR THE EMPLOYEES. IN OTHER WORDS, THE INTENTION OF SUBSECTION (1) OF SECTION 43 WOULD BE FRUSTRATED. IN OUR VIEW, SUCH A RESULT IS NOT CONTEMPLATED BY THE LANGUAGE OF THE SUBSECTION. WE ACCORDINGLY ARE OF THE OPINION THAT IN THE PRESENT CIRCUMSTANCES THE PERSONS WHO SHOULD BE CONSIDERED AS EMPLOYEES FOR PURPOSES OF THE COUNT ARE THOSE PERSONS WHO WERE STILL EMPLOYEES OF THE COMPANY AS OF MARCH 16TH, 1967, THE DATE OF THE INSTANT APPLICATION.

10. ON SEPTEMBER 7TH, 1966, THE DATE OF THE COMMENCEMENT OF THE STRIKE, THE TWENTY-THREE PERSONS WHO REPORTED FOR WORK WERE EMPLOYEES OF THE COMPANY. BETWEEN THAT DATE AND MARCH 16TH, 1967, NEITHER THE COMPANY NOR THE EMPLOYEES TOOK ANY ACTION WHICH TERMINATED THEIR EMPLOYMENT WITH THE COMPANY. ACCORDINGLY, WE FIND PURSUANT TO SECTION 1(2) OF THE ACT THAT ALL OF THE ABOVE TWENTY-THREE PERSONS WERE EMPLOYEES OF THE COMPANY ON MARCH 16TH, 1967 AND ARE EMPLOYEES FOR THE PURPOSE OF THE COUNT ON PETITION.

11. WE COME NOW TO A CONSIDERATION OF THE EMPLOYMENT STATUS OF THE TWENTY-THREE PERSONS WHO WERE LAID-OFF WORK IN JUNE AND JULY OF 1966.

THERE IS A COMPLETE CONFLICT BETWEEN THE EVIDENCE OF THE NINE PERSONS CALLED AS WITNESSES BY THE RESPONDENT, ALL OF WHOM TESTIFIED THAT THEY RECEIVED TELEPHONE CALLS FROM DANIEL OR POLOZ IN EARLY SEPTEMBER ADVISING THEM THAT THEY WOULD BE RECALLED TO WORK WITHIN A PERIOD RANGING OVER FOUR MONTHS AND THE TESTIMONY OF DANIEL AND POLOZ THAT THEY WERE NOT IN COMMUNICATION WITH ANY OF THESE PERSONS AFTER THE MAILING OF THE REGISTERED LETTERS TO THEM ON AUGUST 29TH, 1966. IN ORDER TO ASSIST THE BOARD IN MAKING A DETERMINATION ON THE OBVIOUS ISSUE OF CREDIBILITY RAISED BY THE CONFLICTING TESTIMONY, THE BOARD HAS CAREFULLY CONSIDERED ALL OF THE SURROUNDING CIRCUMSTANCES.

12. THE VERY FACT THAT A SUBSTANTIAL NUMBER OF EMPLOYEES WERE LAID-OFF IN JUNE AND JULY APPEARS TO CONFIRM THE EVIDENCE OF DANIEL THAT THE COMPANY WAS CUTTING BACK PRODUCTION DURING THE SUMMER OF 1966. FURTHER, WE FIND NO REASON NOT TO ACCEPT HIS EVIDENCE AS TO THE LIMITED REQUIREMENTS OF GENERAL MOTORS FOR THE COMPANY'S PRODUCTS WHICH LOGICALLY MADE ANY INCREASE IN PRODUCTION SCHEDULING MOST UNLIKELY. MORE SIGNIFICANTLY, HOWEVER, WE CAN FIND NO RATIONAL REASON WHY DANIEL AND POLOZ, IMMEDIATELY AFTER TERMINATING THE EMPLOYMENT OF THE EMPLOYEES WHO WERE LAID-OFF IN JUNE AND JULY BY LETTER OF AUGUST 29TH, WOULD IMMEDIATELY TELEPHONE SOME OF THESE SAME PERSONS AND SPECIFY A TIME AT WHICH THEY WOULD BE RECALLED. FURTHER, ACCORDING TO MOST OF THE WITNESSES CALLED BY THE RESPONDENT, NEITHER DANIEL NOR POLOZ DURING THE COURSE OF THEIR TELEPHONE CONVERSATIONS WITH THEM MADE ANY REFERENCE TO THE LETTERS OF AUGUST 29TH TERMINATING THEIR EMPLOYMENT. IN OUR VIEW, THE ABSENCE OF ANY REFERENCE TO THESE LETTERS IS HARDLY CREDIBLE.

13. NO SATISFACTORY ANSWER OR EXPLANATION WAS OFFERED AT THE HEARING FOR THE TELEPHONE CALLS OF DANIEL AND POLOZ IF THE EVIDENCE OF THE WITNESSES CALLED BY THE RESPONDENT IS TO BE BELIEVED. ON THE OTHER HAND, THE EVIDENCE OF DANIEL AND POLOZ IS CONSISTENT WITH ALL THE SURROUNDING CIRCUMSTANCES. WE ACCORDINGLY ACCEPT THE EVIDENCE OF DANIEL AND POLOZ AND FIND THAT THE EMPLOYMENT OF THE TWENTY-THREE EMPLOYEES WHO HAD BEEN LAID-OFF IN JUNE AND JULY WAS TERMINATED AS OF THE END OF AUGUST OF 1966. THESE TWENTY-THREE PERSONS THEREFORE CANNOT BE CONSIDERED AS EMPLOYEES OF THE COMPANY FOR ANY PURPOSE RELATING TO THIS APPLICATION.

14. THE BOARD THEREFORE FINDS THAT THE EIGHTEEN PERSONS WHOSE NAMES APPEAR ON THE PETITION, ALL OF WHOM WERE EMPLOYEES OF THE COMPANY AS OF THE DATE OF THE INSTANT APPLICATION, REPRESENT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE COMPANY FOR PURPOSES OF THE COUNT.

15. THE BOARD HAS CONSIDERED ALL OF THE EVIDENCE OF THE APPLICANT RELATING TO THE ORIGINATION, PREPARATION AND CIRCULATION, NOT ONLY OF THE PETITION FILED IN SUPPORT OF THIS APPLICATION, BUT ALSO THE EVIDENCE RELATING TO THE PREPARATION AND CIRCULATION OF A SIMILAR DOCUMENT THAT WAS FILED IN SUPPORT OF A PREVIOUS APPLICATION MADE BY THE SAME APPLICANT WHICH WAS DISMISSED BY THE BOARD AS BEING UNTIMELY. THE BOARD HAS ALSO CONSIDERED THE EVIDENCE ADDUCED BY THE RESPONDENT IN SUPPORT OF ITS CHARGES. HAVING REGARD TO ALL OF THIS EVIDENCE, WE FIND THAT IT DOES NOT SUPPORT THE CONTENTION OF THE RESPONDENT THAT THE COMPANY LENT SUPPORT TO THE PETITION.

16. THE RESPONDENT FURTHER SUBMITS, HOWEVER, THAT BY PAYING TO THE EMPLOYEES WHO SIGNED THE PETITION A SUBSTANTIAL PROPORTION OF THEIR WAGES, THE COMPANY, IN EFFECT, "BOUGHT" THE SUPPORT OF THESE EMPLOYEES, WHICH IN TURN INFLUENCED THEM TO INITIATE AND SUPPORT THE INSTANT APPLICATION. THE RESPONDENT ACCORDINGLY ARGUES THAT THE FACT OF THE PAYMENTS TO THE EMPLOYEES IS SUFFICIENT EVIDENCE IN ITSELF OF MANAGEMENT SUPPORT TO CAUSE THE BOARD TO DISREGARD THE PETITION.

17. WE WOULD POINT OUT THAT ALTHOUGH THE EIGHTEEN EMPLOYEES WITH WHOM WE ARE HERE CONCERNED HAVE NOT BEEN PERFORMING SERVICES FOR THE COMPANY OVER THE PAST EIGHT MONTHS, THE VERY FACT OF THEIR CONTINUED EMPLOYMENT WITH THE COMPANY DOES HAVE SOME VERY REAL VALUE TO THE COMPANY. FOR IT IS COMMON KNOWLEDGE THAT THE OCCUPATIONAL CLASSIFICATIONS IN WHICH MOST OF THESE EMPLOYEES WERE EMPLOYED BY THE COMPANY REQUIRE CONSIDERABLE TRAINING AND SKILL. IT IS ALSO COMMON KNOWLEDGE THAT PERSONS POSSESSING THESE SKILLS ARE IN LIMITED SUPPLY. IT IS REASONABLE TO ASSUME THAT THE COMPANY ANTICIPATES THAT AT SOME TIME IT WILL BE ABLE TO RESUME ITS OPERATIONS. IN ORDER TO DO SO, HOWEVER, IT WILL REQUIRE THE SERVICES OF THESE EMPLOYEES OR PERSONS OF EQUIVALENT SKILLS AND EXPERIENCE. IN OUR VIEW, THE WILLINGNESS OF THE COMPANY TO MEET THE EMPLOYEES' REQUEST FOR FINANCIAL INDEMNIFICATION REFLECTS ITS ANXIETY TO HAVE THEIR SERVICES AVAILABLE AT SUCH TIME IN THE FUTURE AS THEY ARE REQUIRED.

18. WE DO NOT ACCEPT THE SUBMISSION OF THE RESPONDENT THAT THE SUBSTANTIAL SUMS PAID IN WAGES BY THE COMPANY TO THE EIGHTEEN EMPLOYEES HAD THE EFFECT OF "BUYING" THEIR SUPPORT. INDEED, ANY SUCH EFFORT ON THE PART OF THE COMPANY WAS QUITE UNNECESSARY. THE EVIDENCE MAKES IT ABUNDANTLY CLEAR THAT AT THE TIME THE STRIKE COMMENCED NONE OF THE EMPLOYEES WERE SUPPORTERS OF THE RESPONDENT AND ALL WERE UNSYMPATHETIC TO THE STRIKE. FURTHER, IT IS APPARENT FROM THE EVIDENCE THAT THEIR NEGATIVE ATTITUDE TOWARDS BOTH THE UNION AND THE STRIKE CONTINUED TO THE DATE OF THIS APPLICATION. CONTRARY TO THE RESPONDENT'S SUGGESTION, WE ARE FULLY SATISFIED THAT THE FINANCIAL PAYMENTS MADE TO THE EMPLOYEES DURING THE COURSE OF THE STRIKE HAVE HAD NO INFLUENCE ON THE EMPLOYEES AND THAT THE PETITION REPRESENTS A TRUE EXPRESSION OF THEIR DESIRES.

19. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 8TH, 1967 AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT SEBASTINE QUARTARONE AND ROBERT DANIEL DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. WE FIND FURTHER THAT BOTH SEBASTINE QUARTARONE AND ROBERT DANIEL ARE MEMBERS OF THE BARGAINING UNIT. IT HARDLY NEEDS SAYING, THEREFORE, THAT ANY ROLE WHICH THEY PLAYED RELATING TO THE PETITION CANNOT EFFECT THE WEIGHT WHICH THE BOARD WOULD OTHERWISE ATTACH TO THE PETITION.

20. ACCORDINGLY, HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS MADE IN THIS MATTER, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE COMPANY IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.



21. THE BOARD ACCORDINGLY DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF OSHAWA ENGINEERING & WELDING COMPANY LIMITED. THOSE ELIGIBLE TO VOTE ARE THE TWENTY-THREE PERSONS WHOM THE BOARD IN PARAGRAPH 10 FIND TO BE EMPLOYEES OF THE COMPANY AS OF THE DATE OF THE MAKING OF THE INSTANT APPLICATION WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

22. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

23. THE BOARD DIRECTS THAT THE REPRESENTATION VOTE TO BE HELD IN THIS MATTER BE CONDUCTED AT A LOCATION TO BE SELECTED BY THE REGISTRAR AFTER CONSULTATION WITH THE PARTIES.

24. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFE: JUNE 8, 1967.

1. I DISSENT.

2. BASED ON THE REPORT OF THE BOARD EXAMINER WHO INQUIRED INTO THE DUTIES AND RESPONSIBILITIES OF ROBERT FRANK DANIELS JR., I WOULD HAVE FOUND THAT HE EXERCISES MANAGERIAL FUNCTIONS AND/OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND WOULD HAVE EXCLUDED HIM FROM THE BARGAINING UNIT.

3. THE EVIDENCE IN THE REPORT OF THE EXAMINER IS THAT MR. DANIELS, JR. ATTENDED A VERY IMPORTANT MEETING IN MARCH OF 1966 AS A REPRESENTATIVE OF THE COMPANY WITH REGARD TO A LABOUR RELATIONS BOARD SECTION 65 CASE DEALING WITH AN ALLEGED DISMISSAL OF THREE EMPLOYEES CONTRARY TO THE ONTARIO LABOUR RELATIONS ACT.

4. THE FURTHER EVIDENCE AT THE HEARING IN THIS MATTER WAS TO THE EFFECT THAT MR. DANIELS, JR. WAS A SIGNATORY TO THE INSTANT PETITION SEEKING TERMINATION OF BARGAINING RIGHTS AND, IN FACT, ATTENDED A MEETING OF THE BARGAINING UNIT EMPLOYEES FOR THAT PURPOSE.

5. I WOULD HAVE FOUND THAT THE INVOLVEMENT OF MR. DANIELS IN THE INSTANT APPLICATION AND HIS PRESENCE AT THE MEETING CALLED FOR THE PURPOSE OF THIS APPLICATION IS SUFFICIENT TO TAINT IT WITH UNDUE MANAGEMENT INFLUENCE.

6. ON THE DAY THE STRIKE COMMENCED, R. H. DANIELS, SR., THE ASSISTANT MANAGER OF THE COMPANY, MET WITH THE APPLICANT RONALD ROBERTS AND OTHER EMPLOYEES INVOLVED IN THIS APPLICATION AND DISCUSSED THE FINANCIAL CONTRIBUTION NECESSARY TO ENSURE THEIR CONTINUED LOYALTY AND SUPPORT TO THE COMPANY.

7. THE COMPANY'S ORIGINAL PROPOSAL WAS TO PAY THEM 50% OF THEIR WAGES WHILE THE STRIKE CONTINUED, HOWEVER, CERTAIN EMPLOYEES FELT THAT THIS AMOUNT WAS INSUFFICIENT AND PUT FORWARD THE PROPOSAL THAT THE

AMOUNT BE 75% OF THEIR WAGES. SUBSEQUENTLY, THIS LATTER AMOUNT WAS AGREED TO BY THE COMPANY.

8. THE EVIDENCE IS THAT UP TO THE DATE OF THE HEARING OF THIS MATTER, THE COMPANY PAYMENT OF 75% OF THEIR WAGES STILL CONTINUED TO EACH OF THE EMPLOYEES INVOLVED IN THIS APPLICATION.

9. ONE WOULD HAVE TO BE EXTREMELY NAIVE TO FIND THAT THIS LARGE FINANCIAL CONTRIBUTION TO EACH OF THE EMPLOYEES INVOLVED IN THIS APPLICATION DOES NOT HAVE CONSIDERABLE INFLUENCE ON THE RECIPIENTS.

10. I WOULD DISMISS THE INSTANT APPLICATION ON THE FOLLOWING 2 GROUNDS:

- (1) THE PRESENCE AND PARTICIPATION OF R. H. DANIELS, JR. IN THE APPLICATION.
- (2) THE UNDUE INFLUENCE EXERCISED BY MANAGEMENT ON THE APPLICANT BECAUSE OF THE VERY LARGE FINANCIAL CONTRIBUTION MADE BY THE EMPLOYER TO THE EMPLOYEES INVOLVED IN THIS APPLICATION.

11. IT IS MY RESPECTFUL OPINION THAT A VOTE OF THE EMPLOYEES IN THIS CASE WOULD NOT REFLECT THEIR TRUE WISHES WITH REGARD TO THEIR BARGAINING AGENT BECAUSE OF THEIR OBLIGATION TO THEIR EMPLOYER WITH RESPECT TO THE CONTINUING LARGE FINANCIAL CONTRIBUTION MADE BY HIM TO THE GREAT MAJORITY OF EMPLOYEES IN THE UNIT.

12. I WOULD HAVE DISMISSED THE APPLICATION.

13039-67-R: LORNE ROBINSON, HERBERT E. CADIOU, GARY PATTERSON, ROSS CUMMING AND JAMES BEAN (APPLICANTS) V. GALT TYPOGRAPHICAL UNION NO. 411 (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: HERBERT CADIOU AND LORNE ROBINSON FOR THE APPLICANTS, AND ALLAN HISTED, ALLAN HERITAGE AND HOWARD CLARK FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 8, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT. THIS APPLICATION FALLS WITHIN THE AMBIT OF SECTION 43 (2) (A) OF THE ACT, AND, AS THE PARTIES WERE ADVISED AT THE HEARING, THE APPLICATION IS UNTIMELY, NOT HAVING BEEN BROUGHT WITHIN THE PERIOD PROVIDED FOR BY THE STATUTE.

2. ALTHOUGH THE FOREGOING IS SUFFICIENT TO DISPOSE OF THIS APPLICATION, WE PROPOSE AS WELL TO CONSIDER THE EFFECT OF SECTION 43(3) UPON THE APPLICATION. SECTION 43(3) IS AS FOLLOWS:-

UPON AN APPLICATION UNDER SUBSECTION 1 OR 2, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND WHETHER NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 77 THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION, AND, IF NOT LESS THAN 50 PER CENT HAVE SO SIGNIFIED, THE BOARD SHALL, BY A REPRESENTATION VOTE, SATISFY ITSELF THAT A MAJORITY OF THE EMPLOYEES DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

IN THE INSTANT CASE, THE BARGAINING UNIT IS DESCRIBED AS FOLLOWS IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE EMPLOYER:-

JURISDICTION OF THE UNION AND THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IS DEFINED AS INCLUDING ALL COMPOSING ROOM WORK AND INCLUDES CLASSIFICATIONS SUCH AS: HAND COMPOSITORS; TYPESETTING MACHINE OPERATORS; MAKEUP MEN; BANK MEN; PROOFREADERS; PROOFPRESS OPERATORS; MACHINISTS FOR TYPESETTING MACHINES; OPERATORS AND MACHINISTS ON ALL MECHANICAL DEVICES WHICH CAST OR COMPOSE TYPE, SLUGS OR FILM; OPERATORS OF TAPE PERFORATING MACHINES AND RECUTTER UNITS FOR USE IN COMPOSING OR PRODUCING TYPE; OPERATORS OF ALL PHOTOTYPESETTING MACHINES (SUCH AS FOTOSETTER, PHOTON, LINOFILM, MONOPHOTO, COXHEAD LINER, FILMOTYPE, TYPRO, AND HADEGO); EMPLOYEES ENGAGED IN PROOFING, WAXING AND PASTE-MAKEUP WITH REPRODUCTION PROOFS, PROCESSING THE PRODUCT OF PHOTOTYPESETTING MACHINES, INCLUDING DEVELOPMENT AND WAXING; PASTE-MAKEUP OF ALL TYPE, HAND-LETTERED, ILLUSTRATIVE, BORDER AND DECORATIVE MATERIAL CONSTITUTING A PART OF THE COPY; RULING; PHOTO-PROOFING; CORRECTION, ALTERATION, AND IMPOSITION OF THE PASTE-MAKEUP SERVING AS THE COMPLETED COPY FOR THE CAMERA USED IN THE PLATE-MAKING PROCESS; CAMERA WORK (EXCLUDING CAMERA WORK USED EXCLUSIVELY FOR EDITORIAL PHOTOGRAPHS); POST-CAMERA WORK; OFFSET PLATE-MAKING (INCLUDING ALL PLATES SUCH AS DYCRIL PLATES), AND ANY WORK SERVING AS A SUBSTITUTE FOR ANY OF THE FOREGOING. PASTE-MAKEUP FOR THE CAMERA AS USED IN THIS PARAGRAPH INCLUDES ALL PHOTOSTATS AND PRINTS USED IN OFFSET OR LETTERPRESS WORK AND INCLUDES ALL PHOTOSTATS AND POSITIVE PROOFS OF ILLUSTRATIONS (SUCH AS VELOX) WHERE POSITIVE PROOFS CAN BE SUPPLIED WITHOUT SACRIFICE OF QUALITY OR

DUPLICATION OF EFFORTS. THE EMPLOYER SHALL MAKE NO OTHER CONTRACT COVERING WORK AS DESCRIBED ABOVE, ESPECIALLY NO CONTRACT USING THE WORD "STRIPPING" TO COVER ANY OF THE WORK ABOVE MENTIONED. JURISDICTION OF THE UNION AND THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING ALSO INCLUDES ALL EMPLOYEES ENGAGED IN STEREOTYPING AND PRESS ROOM WORK.

THE INSTANT APPLICATION IS BROUGHT WITH RESPECT TO PRESSMEN, STEREOTYPERS AND THEIR APPRENTICES IN THE EMPLOY OF THE EVENING REPORTER AT GALT. THERE ARE SIX SUCH PERSONS, AND EVIDENCE SUPPORTING THE APPLICATION HAS BEEN SUBMITTED ON BEHALF OF FIVE OF THESE. THE BARGAINING UNIT, HOWEVER, INCLUDES MANY OTHER CATEGORIES THEN PRESSMEN, STEREOTYPERS AND THEIR APPRENTICES, INDEED, THERE ARE APPROXIMATELY THIRTY-FIVE PERSONS IN THE EMPLOY OF THE EMPLOYER IN THE BARGAINING UNIT. IN THESE CIRCUMSTANCES IT IS CLEAR THAT IF FULL WEIGHT WERE GIVEN TO THE EVIDENCE SUBMITTED, THE APPLICATION MUST NEVERTHELESS FAIL, SINCE THE EVIDENCE RELATES TO MUCH LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT.

3. IT IS TRUE THAT THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR THE PRESSMEN, STEREOTYPERS AND THEIR APPRENTICES AS A DISTINCT CRAFT GROUP. FOLLOWING CERTIFICATION, HOWEVER, THE RESPONDENT AND THE EMPLOYER ENTERED INTO A COLLECTIVE AGREEMENT IN WHICH THE BARGAINING UNIT WAS DESCRIBED IN THE TERMS SET OUT IN PARAGRAPH 2 ABOVE. THERE WAS NOTHING UNLAWFUL OR IMPROPER IN MAKING SUCH AGREEMENT, WHICH HAD THE EFFECT OF MERGING THE PRESSMEN AND STEREOTYPERS WITH A LARGER GROUP OF EMPLOYEES. IT IS THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT IN EFFECT AS OF THE DATE OF THIS APPLICATION WHICH THE BOARD IS DIRECTED TO CONSIDER UNDER SECTION 43 OF THE ACT. IT MAY BE NOTED THAT THE ACT DOES NOT PROVIDE FOR "DECERTIFICATION" (WHICH TERM MIGHT BE TAKEN TO REFER TO THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE), BUT RATHER FOR THE "TERMINATION OF BARGAINING RIGHTS". FOR THESE REASONS AS WELL, THEREFORE, THIS APPLICATION MUST BE DISMISSED.

13118-67-R: NICADEMO MAMMOLA (APPLICANT) v. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT) v. VILLAGE CONTRACTORS (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS D. ALAN PAGE AND P. J. O'KEEFE.

APPEARANCES AT HEARING: LLOYD CADSBY FOR THE APPLICANT, R. KOSKIE, M. TOPPAN AND TONY NEIL FOR THE RESPONDENT, AND B. W. BINNING AND T. MASCARIN FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 12, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF VILLAGE CONTRACTORS ON OCTOBER 13TH, 1966.



NO COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO BETWEEN THE RESPONDENT AND THE EMPLOYER. ON APRIL 24TH, 1967, THE RESPONDENT REQUESTED THE APPOINTMENT OF A CONCILIATION OFFICER, AND ON MAY 5TH, 1967, THE RESPONDENT AND THE EMPLOYER WERE ADVISED THAT A CONCILIATION OFFICER HAD BEEN APPOINTED.

2. SECTION 46(1) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

SUBJECT TO SUBSECTION 3, WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT, NO APPLICATION FOR CERTIFICATION OF A BARGAINING AGENT OF, OR FOR A DECLARATION THAT A TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE UNTIL,

- (A) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR; OR
- (B) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD; OR
- (C) SIX MONTHS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE OF A REPORT OF THE CONCILIATION OFFICER THAT THE DIFFERENCES BETWEEN THE PARTIES CONCERNING THE TERMS OF A COLLECTIVE AGREEMENT HAVE BEEN SETTLED,

AS THE CASE MAY BE.

IT IS CLEAR THAT THE PRESENT APPLICATION IS UNTIMELY, HAVING REGARD TO THE PROVISIONS OF SECTION 46(1) OF THE ACT. FOR THE REASONS GIVEN IN THE K. J. BEAMISH CONSTRUCTION COMPANY CASE, BOARD FILE NO. 10646-65-R, IT IS OUR VIEW THAT THE PROVISIONS OF SECTION 46 OF THE LABOUR RELATIONS ACT APPLY WITH RESPECT TO THIS APPLICATION. EVEN THOUGH THE APPLICATION WOULD OTHERWISE HAVE BEEN TIMELY, HAVING REGARD TO THE PROVISIONS OF SECTION 96 OF THE ACT, IT MAY BE NOTED THAT SECTION 91 OF THE ACT NOW READS AS FOLLOWS:-

WHERE THERE IS CONFLICT BETWEEN ANY PROVISION IN SECTIONS 92 TO 96 AND ANY PROVISION IN SECTIONS 5 TO 43 AND 47 TO 88, THE PROVISIONS IN SECTION 92 TO 96 PREVAIL. 1961-62, c. 68, s. 16, PART; 1966 c. 76 s. 38.

SECTION 46 IS NOT REFERRED TO IN SECTION 91 AND IS NOT A PROVISION AGAINST WHICH THE PROVISIONS OF SECTIONS 92 TO 96 WOULD PREVAIL IF INDEED THERE WERE ANY CONFLICT BETWEEN SECTION 46 AND ANY OF THE PROVISIONS OF SECTIONS 92 TO 96. IN OUR VIEW, THE AMENDMENT TO SECTION 91 ADDS FORCE TO THE REASONING SET OUT IN THE BEAMISH CASE.

3. FOR THE FOREGOING REASONS THIS APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - LOCKOUT UNLAWFUL

13126-67-U: THE BRICKLAYERS' UNION No. 2 OF TORONTO, ONTARIO (AFFILIATED WITH THE BRICKLAYERS, MASONS, PLASTERERS INTERNATIONAL UNION OF AMERICA) (APPLICANT) V. ROBERT McALPINE LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: S. L. ROBINS, Q.C., J. ZANUSSI AND  
D. WILLIAMS FOR THE APPLICANT, AND JOHN P. SANDERSON AND WM.  
GIBSON FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
R. W. TEAGLE: JUNE 22, 1967.

1. THE APPLICANT SEEKS A DECLARATION THAT A SUSPENSION OF WORK BY THE RESPONDENT ON MAY 15TH AND THEREAFTER AT ITS SUBWAY PROJECT AT ISLINGTON AVENUE AND BLOOR STREET CONSTITUTES AN UNLAWFUL LOCKOUT OF MEMBERS OF THE APPLICANT EMPLOYED THERE BY THE RESPONDENT.

2. A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, DATED THE 30TH DAY OF AUGUST, 1965, WAS IN EFFECT ON MAY 15TH, 1967, AND CONTINUES IN EFFECT UNTIL APRIL 30TH, 1969.

3. ON MAY 12TH, 1967, LOCAL 183 OF THE LABOURERS UNION WITHDREW ITS MEMBERS FROM THE ABOVE JOB SITE, IT WAS ALLEGED BY THE RESPONDENT AND NOT DISPUTED BY THE APPLICANT THAT THE DEPARTURE OF THE MEMBERS OF LOCAL 183 MADE IT IMPOSSIBLE FOR OTHER TRADESMEN TO CARRY ON WITH THEIR WORK, AND THEY WERE LAID OFF BY THE RESPONDENT ON MAY 12TH, 1967. THE BRICKLAYERS, HOWEVER, WERE NOT LAID OFF ON THAT DATE AND REPORTED TO WORK ON MAY 15TH, WHICH DATE THEY WORKED FOR ABOUT SEVEN HOURS AND WERE THEN LAID OFF. THEY WERE PAID EIGHT HOURS PAY WHICH THE RESPONDENT FELT WAS DUE THEM BY VIRTUE OF CLAUSE 19 OF THE COLLECTIVE AGREEMENT ENTITLING THEM TO ONE HOUR'S NOTICE OF LAY-OFF.

4. IT WAS CONCEDED BY THE RESPONDENT THAT AT THE TIME THE BRICKLAYERS WERE REMOVED FROM THE JOB THERE WAS TWO DAYS' WORK AVAILABLE TO THEM. THE RESPONDENT STATED THAT WORK BEYOND THAT DATE WOULD NOT BE POSSIBLE BECAUSE CERTAIN TERRAZZO WORK HAD TO BE COMPLETED BEFORE ANY MORE WORK THAN THAT COULD BE UNDERTAKEN. THE RESPONDENT ALSO STATED THAT ONLY TWO DAYS' SUPPLY OF CEMENT WAS ON HAND FOR USE BY THE BRICKLAYERS.

IT WAS GIVEN IN EVIDENCE THAT THE UNLOADING AND DELIVERY OF CEMENT FROM THE SURFACE TO THE WORK AREA OF THE BRICKLAYERS WAS THE EXCLUSIVE WORK OF MEMBERS OF LOCAL 183. THESE SAME MEMBERS WERE ALSO REQUIRED TO KEEP THE AREA CLEAR OF WASTE MATERIAL, WHICH HAD TO BE REMOVED DAILY BY CRANE FOR WHICH LOCAL 183 PROVIDED THE SIGNALMEN. THE MATERIALS REQUIRED ON THE JOB, BOTH FOR THE BRICKLAYERS AND THE SUB-CONTRACTOR WHO DID THE TERRAZZO WORK, HAD TO BE LOWERED INTO THE SUBWAY BY THE RESPONDENT'S CRANE, WHICH, AS NOTED, HAD TO BE OPERATED WITH THE ASSISTANCE OF A SIGNALMAN FROM LOCAL 183. THE BRICKLAYERS HAD, AS IMMEDIATE ASSISTANTS TO HAND THEM MATERIAL AND DELIVER CEMENT, THREE MEMBERS OF LOCAL 506 OF THE LABOURERS UNION AND ONE MEMBER OF LOCAL 183. THE LATTER LEFT ON MAY 12TH, SO THAT THE CREW OF ASSISTANTS WAS REDUCED TO THREE MEMBERS OF LOCAL 506. IN THE RESPONDENT'S OPINION THIS WAS NOT AN ADEQUATE NUMBER OF ASSISTANTS TO SUPPLY SUFFICIENT MATERIAL TO THE BRICKLAYERS TO KEEP THEM BUSY AND TO KEEP THE AREA CLEAR. FOR THESE REASONS, PLUS THE FACT THAT IT WOULD BE NECESSARY TO RETAIN A STAFF ON THE JOB, THE RESPONDENT SAID IT WOULD BE WHOLLY IMPRACTICABLE AND UNECONOMICAL TO ATTEMPT TO KEEP THE BRICKLAYERS WORKING EVEN FOR TWO DAYS. THEY WERE APPARENTLY NOT LAID OFF WITH THE OTHER TRADESMEN ON THE 12TH OF MAY BECAUSE OF CERTAIN CLEAN-UP WORK THEY WERE REQUIRED TO DO ON MONDAY THE 15TH. THIS WAS AN AREA WHICH THE T.T.C. REQUESTED TO HAVE CLEARED.

5. THE APPLICANT MAINTAINS THAT THERE WAS AND IS FOUR TO FIVE WEEKS WORK AHEAD OF THE BRICKLAYERS. IT CONTENDS THAT AT THE TIME OF THE SHUT-DOWN THERE WAS AN AMPLE SUPPLY OF TILES FOR MANY WEEKS' WORK. THERE WAS, HOWEVER, ONLY A SUFFICIENT AMOUNT OF CEMENT TO ENABLE THE BRICKLAYERS TO CARRY ON FOR A WEEK, ACCORDING TO THE UNION'S EVIDENCE. THE APPLICANT ARGUED THERE WAS AN OBLIGATION ON THE COMPANY TO MAKE AN EFFORT AND TO USE SOME INGENUITY IN ORDER TO PROLONG THE WORK OF THE BRICKLAYERS. IT SUGGESTED, FOR INSTANCE, THAT CEMENT MIGHT BE BROUGHT FROM THE SURFACE BY WHEELBARROW IN THE ABSENCE OF THE CRANE. THE UNLOADING OF MATERIAL, HOWEVER, WAS ALSO LOOKED AFTER BY LOCAL 183. IT WAS THE RESPONDENT'S POSITION THAT EVEN IF SUCH AN ARRANGEMENT COULD BE WORKED OUT IT WOULD BE EXCEEDINGLY EXPENSIVE. THE APPLICANT ARGUED THAT THE RESPONDENT HAD MADE NO EFFORT TO GET HELP TO FILL THE GAP LEFT BY THE DEPARTURE OF LOCAL 183 PEOPLE. IT WAS CRITICAL OF THE FACT THAT NO APPROACH TO LOCAL 506 HAD BEEN MADE BY THE COMPANY. (WITH RESPECT TO THIS IT MIGHT BE OBSERVED THAT THE EVIDENCE IS THAT THE BUSINESS AGENT OF LOCAL 183 HAD NOTIFIED THE RESPONDENT ON MAY 11TH THAT IF ANY ATTEMPT WAS MADE TO USE LOCAL 506 MEN ON JOBS USUALLY DONE BY THE FORMER, A PICKET LINE WOULD BE PUT AROUND THE JOB SITE. THE JOB WAS KEPT UNDER SURVEILLANCE BY LOCAL 183.) THE APPLICANT'S ARGUMENT WAS THAT THE RESPONDENT CANNOT ESCAPE ITS OBLIGATIONS BY HIDING BEHIND A SCREEN OF ANTICIPATED DIFFICULTIES.

6. THE ARGUMENT APPEARS TO BE BASED UPON THE THEORY THAT THE STRIKE AND THE LOCKOUT ARE TACTICS WHICH ARE COUNTERBALANCED. IT IS SUGGESTED THAT IF, IN THE PRESENT INSTANCE, THE BRICKLAYERS HAD REFUSED TO WORK ON THE 16TH OF MAY BECAUSE ONLY TWO DAYS WORK WERE AVAILABLE, A CHARGE OF UNLAWFUL STRIKE WOULD PROBABLY BE UPHOLD ON PROOF OF THOSE

FACTS. BY THE SAME TOKEN, THE APPLICANT URGES, THE REFUSAL OF THE COMPANY, IN THE PRESENT CIRCUMSTANCES, TO ALLOW WILLING EMPLOYEES TO DO THE AVAILABLE WORK SHOULD BE FOUND PRIMA FACIE TO BE AN UNLAWFUL LOCKOUT, AND THE COMPANY SHOULD BE REQUIRED TO SHOW SUBSTANTIAL CAUSE FOR THE CLOSE-DOWN IN ORDER TO AVOID THE INFERENCE, WHICH SHOULD BE DRAWN, THAT A LOCKOUT HAS OCCURRED.

7. IN THE LIGHT OF ALL THE EVIDENCE AND IN PARTICULAR THE UNDISPUTED FACT THAT THE WITHDRAWAL OF LOCAL 183 BROUGHT THE WHOLE PROJECT TO AN IMMEDIATE STANDSTILL FOR ALL OTHER TRADES ON THE JOB SITE, AND ACCEPTING, AS WE DO, THE EVIDENCE THAT THE PRESENCE OF MEMBERS OF LOCAL 183 IS ESSENTIAL FOR THE SUPPLY OF MATERIALS AND THE CLEARANCE OF WASTE NECESSARY TO CARRY ON THE WORK OF THE BRICKLAYERS BEYOND A FEW DAYS, WE ARE PERSUADED THAT THE SUSPENSION OF WORK WAS DICTATED BY THE CIRCUMSTANCES CREATED BY THE ABSENCE OF MEMBERS OF LOCAL 183 AND WAS NOT IMPLEMENTED FOR THE PURPOSES DESCRIBED IN SECTION 1 (1) (g) OF THE LABOUR RELATIONS ACT, AND DOES NOT CONSTITUTE A LOCKOUT.

8. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: JUNE 12, 1967.

I DISSENT.

IN MY OPINION THE REASON GIVEN BY THE COMPANY FOR THE SHUT-DOWN (RE UNECONOMICAL TO OPERATE) IS TOTALLY INADEQUATE.

ACCORDING TO THE EVIDENCE GIVEN BY A UNION WITNESS, THE REASON STATED BY THE SUPERINTENDENT FOR SENDING THE MEN HOME WAS THAT "SINCE LABOURERS ARE OUT WE ARE CLOSING THE JOB - NO POINT IN KEEPING OPEN UNTIL THIS MATTER SETTLED."

THIS TO ME IS A LEFT HANDED WAY OF BRINGING PRESSURE TO BEAR ON PERSONS EXERCISING THEIR RIGHTS UNDER THE LABOUR RELATIONS ACT AND UNDER THE COLLECTIVE AGREEMENT.

ACCORDING TO THE EVIDENCE OF BOTH THE UNION AND THE COMPANY, THERE WAS WORK WHICH COULD BE DONE BY THE BRICKLAYERS AND AS LONG AS THIS WORK WAS AVAILABLE (THERE WAS NO EVIDENCE THAT THIS WORK WOULD COST THE COMPANY EXTRA MONEY), THEREFORE, THE COMPANY COULD NOT LOCK OUT THE EMPLOYEES.

IN THE ROBERT McALPINE LTD. CASE, 'MONTHLY REPORT, DECEMBER, 1966, THE UNION SAID THAT THE REASON FOR THE WALKOUT WAS THE SAFETY OF THE MEN. IT IS INTERESTING TO NOTE IN PARAGRAPH 29, THE MAJORITY OF THE BOARD WAS THIS TO SAY.

IT IS, OF COURSE, INCUMBENT UPON A PARTY WHO RAISES THE ISSUE TO PROVE NOT MERELY APPREHENSION, BUT ALSO THAT THAT APPREHENSION IS BASED ON REASONABLE GROUNDS. THE REASON FOR THIS MUST BE OBVIOUS BECAUSE, OTHERWISE, IT WOULD BE OPEN TO ANYONE TO BRING PRESSURE TO BEAR UPON AN EMPLOYER, WITHOUT CONTRAVENING



THE ACT, BY SIMPLY ALLEGING FEAR AND THEN STRIKING. THE DANGERS TO INDUSTRIAL TRANQUILITY INHERENT IN SUCH A SITUATION ARE TOO PATENT TO REQUIRE FURTHER EXPLANATION.

IF THIS APPLIES TO AN UNLAWFUL STRIKE, SURELY THIS MUST ALSO APPLY TO AN UNLAWFUL LOCKOUT. IN VIEW OF THESE FACTS, I WOULD HAVE GRANTED THE DECLARATION.

INDEXED ENDORSEMENT - PROSECUTION

13035-67-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA  
(APPLICANT) v. TAMBLYN-PRITCHARD CONSTRUCTION LTD. (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. ALAN PAGE AND P. J. O'KEEFE.

APPEARANCES AT HEARING: T. G. HARKNESS FOR THE APPLICANT, AND  
SAMUEL LERNER, WILLIAM C. JOHNSTON AND RAY E. SNELGROVE FOR THE  
RESPONDENT.

DECISION OF THE BOARD: JUNE 28, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT.
2. THE EVIDENCE ESTABLISHES THAT ON APRIL 22ND, 1967, MR. W. C. JOHNSTON, VICE PRESIDENT AND GENERAL MANAGER OF THE RESPONDENT COMPANY, ADDRESSED A MEETING OF THE EMPLOYEES. ATTENDANCE AT THE MEETING WAS NOT COMPULSORY, NOR WERE EMPLOYEES PAID FOR THEIR ATTENDANCE. NEVERTHELESS, THE SUBSTANTIAL MAJORITY OF THE EMPLOYEES WERE PRESENT. MR. JOHNSTON SPOKE WITH RESPECT TO A UNION ORGANIZING CAMPAIGN, WHICH HE UNDERSTOOD TO BE TAKING PLACE. HE INFORMED THE EMPLOYEES OF AN AGREEMENT WHICH HAD EXISTED BETWEEN THE COMPANY AND THE APPLICANT UNION, BY WHICH THE UNION WOULD NOT SEEK TO ORGANIZE EMPLOYEES ENGAGED IN HOUSE CONSTRUCTION. HE ADVISED THE EMPLOYEES THAT WHETHER OR NOT THEY JOINED THE UNION WAS A MATTER OF THEIR OWN CHOOSING. HE FURTHER ADVISED THEM, HOWEVER, THAT IT WOULD NOT BE ECONOMICAL FOR THE COMPANY TO REMAIN IN BUSINESS IF IT WERE NECESSARY TO PAY UNION RATES. THE RESPONDENT COMPANY IS ENGAGED IN HOUSE CONSTRUCTION IN LONDON. THERE IS NO UNION ORGANIZATION AMONG OTHER HOUSE CONSTRUCTION FIRMS IN LONDON. FURTHER, THERE IS A LARGE DIFFERENTIAL BETWEEN THE RATES OF WAGES PAID UNDER COLLECTIVE AGREEMENTS IN THE COMMERCIAL CONSTRUCTION INDUSTRY IN LONDON AND THE RATES PAID BY HOUSE CONSTRUCTION EMPLOYERS. THERE WAS THUS SUBSTANTIAL TRUTH IN MR. JOHNSTON'S REMARKS.
3. SECTION 48 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYER'S ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

THE ONLY QUESTION ARISING IN THIS APPLICATION IS WHETHER THE EXPRESSION OF MR. JOHNSTON'S VIEWS ON THE OCCASION IN QUESTION COULD BE SAID TO INVOLVE THE USE OF "COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE". THIS IS A QUESTION TO BE RESOLVED HAVING REGARD NOT ONLY TO THE CONTENT OF THE REMARKS, BUT ALSO TO THE CONTEXT AND MANNER IN WHICH THEY WERE MADE. IN THIS RESPECT, IT MAY BE NOTED THAT THROUGH A RELATED FIRM IN THE COMMERCIAL CONSTRUCTION INDUSTRY THE RESPONDENT HAS BEEN INVOLVED IN A COLLECTIVE BARGAINING RELATIONSHIP WITH THE APPLICANT TRADE UNION FOR MANY YEARS; THAT THERE HAD BEEN AN AGREEMENT BETWEEN THE EMPLOYER AND THE TRADE UNION THAT THE HOUSE CONSTRUCTION OPERATION WOULD NOT BE THE SUBJECT OF UNION ORGANIZATION; THAT THE MEETING WAS CALLED AT THE URGING OF ONE OF THE RESPONDENT'S EMPLOYEES, WHO WAS, INDEED, A WITNESS FOR THE APPLICANT TRADE UNION; AND THAT MR. JOHNSTON'S REMARKS WERE NOT REGARDED AS A DIRECT THREAT TO PUT THE EMPLOYEES OUT OF WORK IN THE EVENT OF UNION ORGANIZATION.

4. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, IT IS OUR VIEW THAT A CASE HAS NOT BEEN MADE OUT FOR THE GRANTING OF CONSENT TO THE INSTITUTION OF A PROSECUTION.

5. THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

12891-66-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL UNION 2679 (COMPLAINANT) V. I. W. WOOD PRODUCT LTD. (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: A. E. GOLDEN AND H. USLING FOR THE COMPLAINANT.  
AND JOHN P. SANDERSON AND I. WILCHEFORT FOR THE RESPONDENT.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND  
BOARD MEMBER H. F. IRWIN: JUNE 21, 1967.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, SALVATORE CIRINNA, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 (A) AND (C) OF THE LABOUR RELATIONS ACT. MR. CIRINNA WAS LAID OFF FROM HIS EMPLOYMENT WITH THE RESPONDENT ON MARCH 17TH, 1967. HE WAS RECALLED TO WORK ON APRIL 3RD, 1967, AND, IN FACT, RETURNED TO WORK ON APRIL 11TH.

2. THE EVIDENCE IS THAT THE AGGRIEVED PERSON AND A NUMBER OF OTHER EMPLOYEES (ONE OF WHOM IS THE AGGRIEVED PERSON IN ANOTHER COMPLAINT, WHICH WAS HEARD TOGETHER WITH THE INSTANT CASE) WERE LAID OFF DURING A PERIOD FOLLOWING CLOSELY THE RECEIPT BY THE EMPLOYER OF NOTICE OF AN APPLICATION FOR CERTIFICATION MADE BY THE COMPLAINANT WITH RESPECT TO A UNIT OF EMPLOYEES OF THE RESPONDENT. THE EVIDENCE ESTABLISHES THAT THE EMPLOYER WAS ANTAGONISTIC TOWARD UNION ORGANIZATION AMONGST ITS EMPLOYEES.

3. IN OUR VIEW, HOWEVER, THE EVIDENCE DOES NOT ESTABLISH THAT THE LAY-OFF OF THE AGGRIEVED PERSON AND THE OTHER EMPLOYEES WAS ON ACCOUNT OF THEIR MEMBERSHIP IN A TRADE UNION OR THEIR EXERCISE OF ANY RIGHTS UNDER THE ACT, NOR DOES IT ESTABLISH THAT THE RESPONDENT'S ACTION WAS FOR THE PURPOSE OF COMPELLING AN EMPLOYEE TO REFRAIN FROM BECOMING OR TO CEASE TO BE A MEMBER OF THE TRADE UNION OR TO CEASE TO EXERCISE ANY RIGHTS UNDER THE ACT.

4. AN EXPLANATION WAS GIVEN AS TO THE BUSINESS NECESSITY FOR THE LAY-OFF. THERE WAS NO EVIDENCE WHICH, IN OUR OPINION, WOULD CONTRADICT THIS EXPLANATION. ALTHOUGH A COMPLAINANT IN AN APPLICATION SUCH AS THIS MAY OF NECESSITY HAVE TO RELY ON CIRCUMSTANTIAL EVIDENCE IN ORDER TO ESTABLISH ITS CASE, IT, NEVERTHELESS, REMAINS THAT THE ONUS ON THE COMPLAINANT IS TO ESTABLISH ITS CASE ON THE BALANCE OF PROBABILITIES. HAVING CONSIDERED ALL OF THE EVIDENCE IN THE INSTANT CASE AND THE ARGUMENTS RELATING THERETO, THE BOARD IS NOT SATISFIED THAT SALVATORE CIRINNA WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

5. THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

JUNE 21, 1967.

THE EVIDENCE IN THIS MATTER IS TO THE EFFECT THAT FOLLOWING THE POSTING OF NOTICE OF THE UNION'S APPLICATION FOR CERTIFICATION ON THE COMPANY PREMISES, MR. SAM STEIN, FOREMAN OF THE RESPONDENT, WENT TO THE LUNCHROOM AND SPOKE TO THE EMPLOYEES ABOUT THE UNION APPLICATION.

HE SAID HE HAD PREVIOUS EXPERIENCE IN A UNION AND THAT THE UNION WAS NO GOOD. HE ALSO TOLD THE EMPLOYEES THAT IF THEY WANTED TO WORK FOR THE COMPANY THEY HAD BETTER FORGET THE UNION. HE THEN ASKED THE EMPLOYEES IF THEY HAD JOINED THE UNION. HAVING SATISFIED HIMSELF THAT ALL THE EMPLOYEES WERE MEMBERS OF THE UNION HE THEN LEFT THE MEETING.

AFTER THE SAME DAY A LARGE NUMBER OF EMPLOYEES, INCLUDING THE AGGRIEVED IN THE INSTANT CASE, WERE LAID OFF.

THE RESPONDENT GAVE EVIDENCE AS TO THE BUSINESS NECESSITY FOR THE ALLEGED LAY-OFF, WHICH WAS COMPLETELY UNACCEPTABLE IN LIGHT OF THE EVIDENCE FROM THE AGGRIEVED MR. SALVATORE CIRINNA, WHO TOLD THE BOARD THAT HE HAD WORKED OVERTIME ON THE PREVIOUS SATURDAY AND THAT THERE WAS WORK TO DO AT THE TIME OF HIS ALLEGED LAY-OFF.

THE PICTURE THAT EMERGED FROM THE EVIDENCE OF MR. CIRINNA, SUPPORTED BY THE FURTHER EVIDENCE OF MR. AGOSTINI AND MR. DASILVA, WAS OF AN ATMOSPHERE OF INTIMIDATION AND COERCION CREATED BY THE FOREMAN, MR. SAM STEIN, ON THE MORNING AND AFTERNOON OF MARCH 10TH, THE DATE OF THE LARGE SCALE DISMISSALS.

MR. WILCHFORTH, THE PRESIDENT OF THE COMPANY, GAVE EVIDENCE TO THE EFFECT THAT MR. STEIN WAS HOT HEADED. WHEN HE (MR. WILCHFORTH) HEARD SOMETIME LATER ABOUT STEIN'S ACTIVITIES OF MARCH 10TH HE HAD WARNED HIM AGAINST FURTHER SUCH BEHAVIOUR.

IT WAS OF SOME INTEREST TO NOTE THAT MR. SAM STEIN WAS NOT CALLED ON BY THE RESPONDENT TO GIVE EVIDENCE AS TO HIS ACTIONS OR TO REBUT THE SERIOUS CHARGES MADE AGAINST HIM.

THE PICTURE THAT EMERGES FROM THE INSTANT CASE IS THAT OF A GROUP OF IMMIGRANT EMPLOYEES WHO OBVIOUSLY SET OUT TO BETTER THEIR LOT IN A FREE AND DEMOCRATIC SOCIETY BY SEEKING REPRESENTATION BY A UNION OF THEIR CHOICE. THIS SIMPLE ENDEAVOUR OF THEIRS IS MET BY A "BULLY BOY" IN THE PERSON OF MR. SAM STEIN, THE FOREMAN OF THE RESPONDENT, WHO PARADES IN FRONT OF THEM LIKE A STORM TROOPER AND UPBRAIDS THEM FOR EXERCISING THEIR RIGHT TO JOIN A UNION. HE QUESTIONS THEM TO FIND OUT WHICH OF THEM HAD JOINED THE UNION, AND THEN PROCEEDS TO INTIMIDATE AND COERCE THEM. LATER THE SAME DAY THE AGGRIEVED AND A NUMBER OF OTHER EMPLOYEES ARE DISMISSED FROM THEIR EMPLOYMENT. SUCH EARLY 20TH CENTURY "BULLY BOY" TACTICS, INTIMIDATION AND COERCION, SHOULD NOT BE TOLERATED IN OUR MODERN DAY LABOUR RELATIONSHIPS.

THE TOLERATION OF SUCH ILLEGAL ANTI-UNION, ANTI-DEMOCRATIC BEHAVIOUR CAN ONLY HAVE THE EFFECT OF CONTINUING THE JUNGLE TYPE RELATIONSHIP BETWEEN MANAGEMENT AND LABOUR. AS A MEMBER OF THE BOARD, I BELIEVE IT IS ONE OF MY FUNCTIONS TO ENCOURAGE A MORE CIVILIZED AND SOPHISTICATED RELATIONSHIP BETWEEN ALL PARTIES INVOLVED IN THE COMPLEX EMPLOYER-EMPLOYEE FIELD.

ON THE BASIS OF THE SEQUENCE OF EVENTS, THE BEHAVIOUR OF THE FOREMEN, SAM STEIN, AND THE CLEAR EVIDENCE TO THE EFFECT THAT THE EMPLOYEES WERE ANTAGONISTIC TOWARD UNION ORGANIZATION OF ITS EMPLOYEES, HAVE NO HESITATION IN FINDING THAT THE AGGRIEVED MR. SALVATORE CIRINNA WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT AND ON THE BASIS OF SUCH FINDING, WOULD ORDER HIS REINSTATEMENT WITH FULL SENIORITY AND COMPENSATION FOR ALL WAGES AND BENEFITS LOST BY HIM.



13036-67-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V.  
BOYLE MIDWAY (CANADA) LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND F. W. MURRAY.

APPEARANCES AT HEARING: DONALD MACDONALD AND MRS. P. FURLONG FOR  
THE COMPLAINANT, W. S. COOK, D. SANDERSON W. CARLTON FOR THE  
RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
O. HODGES: JUNE 15, 1967.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR  
RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSON  
PHYLISS FURLONG HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE  
PROVISIONS OF SECTION 50(A) AND (C) OF THE LABOUR RELATIONS ACT.

2. MRS. FURLONG COMMENCED HER EMPLOYMENT WITH THE RESPONDENT IN  
SEPTEMBER OF 1964 AND REMAINED IN THE COMPANY'S EMPLOY UNTIL SHE WAS  
SUSPENDED ON MARCH 29TH, 1967 AND WAS LATER DISCHARGED ON APRIL 24TH,  
1967. SHE TESTIFIED THAT SHE JOINED THE COMPLAINANT UNION ON DECEMBER  
4TH, 1966 AND THAT ON JANUARY 9TH, 1967, SUBSEQUENT TO THE CERTIFICATION  
OF THE COMPLAINANT ON DECEMBER 22ND, 1966, SHE WAS ELECTED AS A MEMBER  
OF THE UNION'S NEGOTIATING COMMITTEE. HER EVIDENCE IS THAT PRIOR TO  
FEBRUARY OF THIS YEAR THE RESPONDENT FOUND HER TO BE A SATISFACTORY  
EMPLOYEE AND THAT SHE HAD NEVER BEEN REPRIMANDED OR GIVEN ANY WARNINGS  
BY MANAGEMENT CONCERNING HER WORK.

3. FRED MONK, THE RESPONDENT'S PRODUCTION DEPARTMENT SUPERVISOR,  
ALSO TESTIFIED THAT SHE HAD BEEN A SATISFACTORY EMPLOYEE UNTIL JANUARY  
OF THIS YEAR. HIS EVIDENCE, HOWEVER, IS THAT DURING THE FIRST THREE  
MONTHS OF THIS YEAR SHE CEASED TO BE A SATISFACTORY EMPLOYEE. MONK  
TESTIFIED THAT DURING THIS PERIOD SHE WAS VERY "COCKY" AND THAT SHE  
DEFIED AND REFUSED TO FOLLOW THE INSTRUCTIONS OF THE LEAD GIRLS ON THE  
LINE WHERE SHE WORKED. HIS TESTIMONY IS THAT THE LEAD GIRLS COMPLAINED  
TO HIM CONCERNING MRS. FURLONG'S CONDUCT AND ATTITUDE AND THAT HE IN  
TURN REPORTED THIS TO THE SENIOR OFFICIALS OF THE COMPANY. MONK STATED  
THAT HE WAS AWARE OF MRS. FURLONG'S MEMBERSHIP IN THE UNION THROUGHOUT  
THIS PERIOD.

4. MONK TESTIFIED THAT WARNINGS CONCERNING HER CONDUCT WERE  
ISSUED TO HER ON JANUARY 30TH, FEBRUARY 17TH AND MARCH 14TH, 1967. HIS  
EVIDENCE IS THAT THE PRODUCTION LINES START OPERATIONS AT 8:00 A.M. AND  
THAT ON JANUARY 30TH, BECAUSE OF MRS. FURLONG'S ABSENCE FROM HER POSITION  
ON THE LINE, THE OPERATIONS OF THE LINE THAT SHE WAS ON WAS HELD UP FOR  
THREE MINUTES. HE TESTIFIED THAT HE INSTRUCTED ELIZABETH HUGHSON, THE  
LEAD LINE GIRL, TO REPRIMAND MRS. FURLONG AND THAT IN HIS PRESENCE HUGHSON  
HAD SPOKEN TO MRS. FURLONG. ACCORDING TO MONK, ON FEBRUARY 17TH, AT  
APPROXIMATELY 9:45 A.M., WHICH IS FIVE MINUTES PRIOR TO THE EMPLOYEES  
REGULAR BREAK PERIOD, HE ENCOUNTERED MRS. FURLONG TALKING TO TWO OTHER

EMPLOYEES IN THE CAFETERIA AISLE AND TOLD HER TO RETURN TO WORK. HIS EVIDENCE IS THAT MRS. FURLONG MADE NO MOVE TO RETURN TO WORK AND CONTINUED TO TALK TO THE EMPLOYEES. MONK TESTIFIED FURTHER THAT ON MARCH 14TH, MRS. FURLONG LEFT HER LINE AT APPROXIMATELY 12:32 P.M. AND WENT TO ANOTHER LINE AND SPOKE WITH TWO OTHER OPERATORS. THE LINE AFTER THE LUNCH BREAK BEGINS OPERATIONS AT 12:30 P.M. ON THAT OCCASION MONK STATED THAT HE SPOKE TO HER ABOUT LEAVING HER LINE.

5. MRS. FURLONG'S EVIDENCE IS THAT AN ELEANOR PELTZ WAS SCHEDULED TO BE THE LEAD LINE GIRL ON THE LINE TO WHICH MRS. FURLONG HAD BEEN ASSIGNED ON THE MORNING OF JANUARY 30TH, BUT THAT PELTZ DID NOT APPEAR. MRS. FURLONG SAID THAT SHE THEN WENT TO MONK'S OFFICE TO FIND OUT TO WHOM SHE WAS TO REPORT AND THAT MONK ASSIGNED HER TO ELIZABETH HUGHSON'S LINE. AS A RESULT OF THE CHANGE IN LEAD LINE GIRLS, WORK ON THAT LINE COMMENCED AT 8:05 A.M. RATHER THAN 8:00 A.M. ON THAT MORNING. MONK IN HIS EVIDENCE DID NOT RECALL THAT THERE HAD BEEN ANY CHANGE IN THE LEAD LINE GIRLS ON THAT MORNING. FURLONG TESTIFIED THAT HUGHSON HAD NOT REPRIMANDED HER AND THAT SHE IN FACT SAID NOTHING TO HER. FURLONG'S EVIDENCE IS THAT ON THE MORNING OF FEBRUARY 17TH, THE MACHINE ON WHICH SHE HAD BEEN WORKING BECAME JAMMED SO SHE PROCEEDED TO CLEAN UP SOME SCRAP MATERIAL. WHILE DOING SO, ACCORDING TO HER EVIDENCE SHE MET ANOTHER EMPLOYEE GOING TOWARDS THE CAFETERIA AND TOLD HIM HER MACHINE WAS JAMMED. SHE TESTIFIED THAT SHE THEREUPON PROCEEDED TO THE CAFETERIA FOR HER BREAK PERIOD. HER EVIDENCE IS THAT UPON LEAVING THE CAFETERIA MONK APPROACHED HER AND WARNED HER NOT TO TALK ABOUT THE UNION ON COMPANY TIME. SHE STATED THAT SHE TOLD MONK THAT SHE HAD NOT BEEN DISCUSSING THE UNION. MONK DENIED MAKING ANY REFERENCE TO THE UNION. MRS. FURLONG ADMITTED THAT SHE WAS TWO MINUTES LATE IN GETTING TO HER LINE ON THE AFTERNOON OF MARCH 14TH AND THAT MONK SPOKE TO HER ABOUT IT.

6. DONALD SANDERSON, THE GENERAL MANAGER OF THE RESPONDENT, TESTIFIED THAT THE FIRST NEGOTIATING SESSION WITH THE UNION TOOK PLACE AT THE BEGINNING OF MARCH AND THAT A MR. NETHERTON WHO IS THE BUSINESS AGENT FOR THE UNION AND MRS. FURLONG AS WELL AS TWO OTHER EMPLOYEES FORMED THE UNION'S NEGOTIATING COMMITTEE. HIS EVIDENCE IS THAT HE HAD HEARD MRS. FURLONG WAS A MEMBER OF THE UNION BUT THAT HE DID NOT KNOW SHE WAS A MEMBER OF THE UNION'S NEGOTIATING COMMITTEE UNTIL THE DAY OF THE MEETING. ACCORDING TO SANDERSON ON THAT OCCASION AND AT A SUBSEQUENT NEGOTIATING MEETING ON MARCH 22ND HE INFORMED NETHERTON OF THE PROBLEMS THE COMPANY WAS ENCOUNTERING WITH MRS. FURLONG. NETHERTON ASKED SANDERSON ON MARCH 22ND TO SET OUT SPECIFICALLY IN WRITING THE PROBLEMS TO WHICH SANDERSON WAS REFERRING. SANDERSON SAID THAT HE THEREUPON INSTRUCTED MONK TO PREPARE SUCH A MEMORANDUM. AT LEAST ONE FURTHER BARGAINING SESSION TOOK PLACE BETWEEN THE COMPANY AND THE UNION IN APRIL SANDERSON ADMITS THAT HE DENIED MRS. FURLONG ACCESS TO THE PLANT TO ATTEND THE MEETING ON THE GROUNDS THAT AT THAT TIME SHE WAS UNDER SUSPENSION BY THE COMPANY.

7. MONK TESTIFIED THAT ON SANDERSON'S INSTRUCTIONS HE PREPARED A MEMORANDUM. THIS MEMORANDUM WHICH IS DATED MARCH 29TH IS ADDRESSED TO THE ATTENTION OF MRS. FURLONG. THE MEMORANDUM, WHICH WAS FILED WITH THE

BOARD, OUTLINES THE INCIDENTS OF JANUARY 30TH, FEBRUARY 17TH AND MARCH 14TH, WHICH ARE SET OUT IN MONK'S TESTIMONY IN PARAGRAPH 4. THE MEMORANDUM ALSO STATES THAT THE MARCH 14TH WARNING WAS THE LAST THAT WOULD BE ISSUED TO MRS. FURLONG AND THAT ANY FURTHER INFRACTIONS OF THE COMPANY'S RULES WOULD RESULT IN HER IMMEDIATE SUSPENSION OR DISCHARGE.

8. ON THE SAME DAY, MARCH 29TH, MONK CALLED MRS. FURLONG INTO HIS OFFICE AND READ THE MEMORANDUM TO HER. ACCORDING TO HIS TESTIMONY MRS. FURLONG STATED THAT BOTH HE AND THE LEAD LINE GIRLS WERE PICKING ON HER. HE TESTIFIED THAT SHORTLY AFTER SHE LEFT HIS OFFICE HE HEARD HER SHOUT IN A LOUD VOICE AT ONE OF THE LEAD LINE GIRLS THELMA VIRON, "THANK ALL YOU GODDAM LEAD GIRLS". VIRON CONFIRMED IN HER EVIDENCE THAT MRS. FURLONG HAD MADE THAT REMARK TO HER. BERTHA LALONDE, WHO WAS IN MONK'S OFFICE AT THE TIME, TESTIFIED THAT SHE RECOGNIZED MRS. FURLONG'S VOICE BUT THAT SHE COULD NOT HEAR WHAT SHE WAS SAYING. MRS. FURLONG DID NOT DISPUTE THAT MONK READ THE MEMORANDUM TO HER BUT TESTIFIED THAT WHEN SHE TRIED TO SPEAK TO HIM ABOUT THE ITEMS CONCERNED HE WOULD NOT LISTEN TO HER. ACCORDING TO HER EVIDENCE WHEN SHE LEFT MONK'S OFFICE SHE SAID TO VIRON, "I WANT TO THANK YOU AND ALL THE REST OF THE LINE GIRLS". SHE DENIED HAVING USED ANY "SWEAR" WORDS.

9. MONK TESTIFIED THAT AFTER MRS. FURLONG'S "OUTBURST", THELMA VIRON IMMEDIATELY CAME TO HIS OFFICE AND ASKED HIM IF SHE HAD TO TAKE THAT. MONK'S EVIDENCE IS THAT HE TOLD HER THAT HE WOULD LOOK AFTER THE MATTER. MONK SAID HE THEN REPORTED HIS INTERVIEW WITH MRS. FURLONG AND HER "OUTBURST" TO MR. CARLTON, THE VICE-PRESIDENT OF THE COMPANY. MR. WATERFIELD, THE PLANT SUPERINTENDENT, TESTIFIED THAT MONK AND CARLTON CAME TO HIS OFFICE ON MARCH 29TH AND CONVEYED THE SAME INFORMATION CONCERNING MRS. FURLONG. HIS EVIDENCE IS THAT ON THE BASIS OF HER CONDUCT AS REPORTED TO HIM HE CALLED MRS. FURLONG TO HIS OFFICE AND SUSPENDED HER EMPLOYMENT WITH THE COMPANY, EFFECTIVE IMMEDIATELY, UNTIL FURTHER NOTICE.

10. SANDERSON TESTIFIED THAT HE WAS ABSENT FROM THE PLANT ON MARCH 29TH WHEN MRS. FURLONG WAS SUSPENDED BUT THAT UPON HIS RETURN ON APRIL 4TH, AFTER CONSULTATION WITH THE LEAD GIRLS AND MEMBERS OF MANAGEMENT HE WAS SATISFIED THAT MRS. FURLONG'S SUSPENSION WAS JUSTIFIED. AFTER AN EXCHANGE OF CORRESPONDENCE BETWEEN MRS. FURLONG AND THE RESPONDENT, SANDERSON AND WATERFIELD MET WITH MRS. FURLONG FOR THE PURPOSE OF REVIEWING HER SUSPENSION. SANDERSON'S EVIDENCE IS THAT HE GAVE HER AN OPPORTUNITY TO EXPLAIN HER POSITION BUT THAT AS A RESULT OF THE ATTITUDE TOWARD THE COMPANY WHICH SHE REFLECTED HE DECIDED THAT SHE SHOULD BE DISCHARGED AND HE SO INFORMED HER. MRS. FURLONG TESTIFIED THAT SANDERSON INFORMED HER THAT SHE WAS BEING DISCHARGED BECAUSE OF HER "OUTBURST" AT THELMA VIRON ON MARCH 29TH.

11. THERE ARE OBVIOUS CONFLICTS BETWEEN THE EVIDENCE OF MRS. FURLONG AND MONK CONCERNING INCIDENTS THAT ARE ALLEGED TO HAVE OCCURRED ON JANUARY 30TH, FEBRUARY 17TH AND MARCH 14TH. EVEN IF WE WERE TO ACCEPT MONK'S VERSION OF THESE INCIDENTS THE COMPLAINTS ABOUT MRS. FURLONG, IN OUR VIEW, ARE LARGELY OF A TRIVIAL NATURE. MOREOVER, WE FOUND MONK'S EVIDENCE CONCERNING MRS. FURLONG'S GENERALLY UNCOOPERATIVE ATTITUDE QUITE

UNCONVINCING. WE NOTE THE ABSENCE OF CORROBORATIVE EVIDENCE BY ANY OF THE LEAD GIRLS CONCERNING MRS. FURLONG'S CONDUCT OR ATTITUDE ON THE JOB. IT SEEMS MOST AMAZING THAT AFTER FINDING MRS. FURLONG TO BE AN ACCEPTABLE EMPLOYEE FOR WELL OVER TWO YEARS THE RESPONDENT, SUDDENLY, DURING THE FIRST THREE MONTHS OF THIS YEAR FINDS THAT SHE IS A TOTALLY UNSATISFACTORY EMPLOYEE.

12. IN OUR OPINION, IT IS MORE THAN COINCIDENTAL THAT MRS. FURLONG'S SUDDEN FALL FROM FAVOUR WITH THE RESPONDENT OCCURRED AT A TIME WHEN THE COMPLAINANT UNION WAS ATTEMPTING TO NEGOTIATE A COLLECTIVE AGREEMENT WITH THE RESPONDENT. THE VERY FACT THAT EARLY IN JANUARY SHE WAS ELECTED TO THE UNION'S NEGOTIATING COMMITTEE IS A GOOD INDICATION THAT SHE WAS A STRONG SUPPORTER OF THE UNION. IT WAS ADMITTED THAT THE MANAGEMENT OF THE RESPONDENT KNEW OF HER MEMBERSHIP IN THE UNION AND HAVING REGARD TO THE NATURE OF THE RESPONDENT'S PLANT AS REVEALED BY THE EVIDENCE IT IS REASONABLE TO ASSUME THAT THE RESPONDENT WAS AWARE OF HER ACTIVE SUPPORT FOR THE UNION EVEN BEFORE HER APPEARANCE ON THE NEGOTIATING COMMITTEE.

13. IN LIGHT OF THE GENERALLY PICAYUNE NATURE OF THE OFFENCES MRS. FURLONG WAS ALLEGED TO HAVE COMMITTED, WE FIND THE ULTIMATUM CONTAINED IN THE MEMORANDUM OF MARCH 29TH, THAT ANY FUTURE INFRACTIONS OF THE COMPANY'S RULES WOULD RESULT IN HER SUSPENSION OR DISCHARGE, MOST EXTRAORDINARY. WITH REFERENCE TO THE MEMORANDUM ITSELF, SANDERSON'S EVIDENCE WAS THAT HE INSTRUCTED MONK TO PREPARE A MEMORANDUM OUTLINING MRS. FURLONG'S SHORTCOMINGS FOR THE BENEFIT AND PERUSAL OF MR. NETHERTON. INSTEAD, THE MEMORANDUM WAS DIRECTED TO MRS. FURLONG AND ENCOMPASSED AS WELL THE ABOVE REFERRED TO ULTIMATUM. FURTHER, THE FACT THAT WITHIN HOURS OF THE DELIVERY OF THE MEMORANDUM TO HER THE RESPONDENT WITH THE GREATEST OF EXPEDITION SUSPENDED HER FOR HER "OUTBURST" WHICH, IN OUR VIEW, WAS OF MINOR CONSEQUENCE, STRONGLY SUGGESTS TO US THAT THE RESPONDENT WAS SEEKING AN EXCUSE TO TERMINATE HER EMPLOYMENT. FINALLY, WE WOULD MENTION THAT THE COMPLAINANT WAS CLEARLY ENTITLED TO HAVE MRS. FURLONG CONTINUE AS A MEMBER OF ITS NEGOTIATING COMMITTEE DURING THE PERIOD OF HER SUSPENSION. IN THIS CIRCUMSTANCE, SANDERSON'S REFUSAL TO ALLOW HER INTO THE PLANT TO ATTEND A NEGOTIATING MEETING WHILE SHE WAS SUSPENDED SHEDS SOME LIGHT ON THE RESPONDENT'S ATTITUDE TOWARDS HER.

14. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, AS STATED IN PARAGRAPH 1 OF THE BOARD'S DECISION OF JUNE 7TH, 1967, THE BOARD IS SATISFIED THAT THE RESPONDENT SUSPENDED MRS. FURLONG ON MARCH 29TH AND SUBSEQUENTLY DISCHARGED HER ON APRIL 24TH, 1967 BECAUSE OF HER UNION ACTIVITIES IN CONTRAVENTION OF SECTION 50(A) OF THE ACT.

15. THE BOARD'S DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS SET OUT IN PARAGRAPH 2 OF THE BOARD'S DECISION OF JUNE 7TH, 1967.

DECISION OF BOARD MEMBER F. W. MURRAY: JUNE 15, 1967.

1. I DISSENT FROM THE MAJORITY OPINION, AND ON A CAREFUL REVIEW



OF THE EVIDENCE, I AM UNABLE TO FIND ANY EVIDENCE TO SUPPORT THE CONTENTION THAT THE COMPLAINANT, MRS. FURLONG, WAS DISCHARGED FOR UNION ACTIVITY.

2. IN EXAMINING THE EVIDENCE, I FIND THAT ON THE POINT OF CREDIBILITY, I WOULD NOT HAVE BELIEVED THE COMPLAINANT, IN THAT HER TESTIMONY IN SEVERAL IMPORTANT AREAS WAS CONTRADICTED BY TWO OTHER WITNESSES. HER EVIDENCE, REPEATED SEVERAL TIMES, WAS THAT SHE QUIETLY SAID, WITHOUT RAISING HER VOICE TO THELMA VIRON, ONE OF THE LEAD LINE GIRLS "I WANT TO THANK YOU AND ALL THE REST OF THE LINE GIRLS" AFTER HER INTERVIEW IN MR. MONK'S OFFICE ON MARCH 29TH. SHE WOULD HAVE HAD THE BOARD BELIEVE THAT SHE DID NOT RAISE HER VOICE, AND INDEED, SHE DENIED USING ANY "SWEAR WORDS". THELMA VIRON, THE LINE GIRL IN QUESTION, TESTIFIED THAT SHE SAID IN A LOUD VOICE, SUFFICIENT TO BE HEARD ACROSS THE DISTANCE OF THE BOARD ROOM "THANKS A LOT YOU GODDAM LINE GIRLS".

3. THELMA VIRON MOREOVER TESTIFIED THAT SHE SAW MR. MONK STANDING AT THE EDGE OF HIS DESK, WHICH MEANT OF COURSE THAT MR. MONK'S DOOR MUST HAVE BEEN OPEN (AS MR. MONK TESTIFIED), OR OTHERWISE SHE WOULD NOT HAVE SEEN MR. MONK'S POSITION IN THE OFFICE. MR. MONK ALSO TESTIFIED THAT HE IN FACT HEARD THE COMPLAINANT SAY EXACTLY THE SAME THING. MOREOVER, THE LEAD LINE GIRL IN QUESTION IMMEDIATELY AFTERWARD APPROACHED MR. MONK AND ASKED "DO WE HAVE TO PUT UP WITH THAT?"

4. IT IS MY OPINION THAT THIS SINGULAR DIFFERENCE IN THE EVIDENCE CONCERNING THE EPISODE OCCURRING IMMEDIATELY AFTER THE COMPLAINANT'S INTERVIEW WITH MR. MONK IN HIS OFFICE ON MARCH 29TH, CAUSES GRAVE DOUBT AS TO THE CREDIBILITY OF THE TESTIMONY OF THE COMPLAINANT.

5. FROM THE EVIDENCE, I WOULD AGREE THAT COMMENCING IN JANUARY OF THIS YEAR, MR. MONK STARTED TO HAVE DIFFICULTY WITH MRS. FURLONG. THIS MAY INDEED HAVE BEEN THE RESULT OF A CLASH OF PERSONALITIES, BUT NONETHELESS THE EVIDENCE IS QUITE CLEAR THAT MR. MONK FOUND THAT MRS. FURLONG WAS "COCKY", NOT ONLY WITH THE LEAD GIRLS, BUT WITH HIMSELF, AND IN A MINOR, BUT NONETHELESS ANNOYING WAY, SHOWED A DEFIANT ATTITUDE TO HIS AUTHORITY, IE: WHEN SHE CONTINUED TALKING TO EMPLOYEES, DESPITE HIS INSTRUCTIONS TO RETURN TO WORK. MR. MONK CLAIMS THAT THIS TYPE OF BEHAVIOUR WAS COMMON DURING THE PERIOD, AND THAT THE LEAD GIRLS ALSO COMPLAINED OF FURLONG'S BEHAVIOUR. WHEN INSTRUCTED BY MR. SANDERSON TO PREPARE A MEMO AS TO HER BEHAVIOUR, MR. MONK WAS ONLY ABLE AT THE TIME TO CITE THREE INSTANCES IN HER BEHAVIOUR. HAD THIS MEMO CONTAINED, OR INDEED, HAD OUR BOARD BEEN PRESENTED WITH A DETAILED, DOCUMENTED HISTORY OF WHAT WERE BASICALLY INDIVIDUALLY MINOR OFFENCES, NAMING TIME AND PLACE OF EACH AND EVERY MISDEMEANOR, I WOULD BE MORE INCLINED TO SUSPECT THAT THE COMPANY HAD SET OUT ON A PLANNED COURSE TO DISCHARGE THE COMPLAINANT. HAVING REGARD FOR THE NATURE OF THE OFFENCES, IT IS, IN MY OPINION, QUITE NATURAL FOR THE SUPERVISOR NOT TO BE ABLE TO RECALL EACH INCIDENT IN DETAIL. MR. MONK TESTIFIED THAT THE MEMO PRESENTED TO MRS. FURLONG ON MARCH 29TH, OUTLINED ONLY A "PERCENTAGE" OF THE INSTANCES IN WHICH HE FELT SHE HAD BEEN UNCO-OPERATIVE OR COCKY, OR OTHERWISE BEHAVED IN AN UNSATISFACTORY MANNER.

6. MOREOVER, RUNNING THROUGH THE TESTIMONY OF ALL OF THE WITNESSES, INCLUDING THAT OF THE COMPLAINANT HERSELF, IS THE FACT THAT THE COMPLAINANT'S DISPUTES OR DIFFERENCES UP TO THE TIME OF HER SUSPENSION, WERE BETWEEN HERSELF AND THE LEAD LINE GIRLS, AND MR. MONK. THIS IS BORNE OUT BY THE COMPLAINANT'S REACTION AND REMARK TO THELMA VIRON AFTER THE INTERVIEW AND WARNING NOTICE GIVEN BY MR. MONK ON MARCH 29TH. IT IS QUITE CLEAR SHE HELD THE LEAD GIRLS RESPONSIBLE IN LARGE MEASURE FOR THE DIFFICULTY SHE WAS IN.

7. MR. MONK TESTIFIED THAT WHILE NOT BEING SATISFIED WITH THE COMPLAINANT'S BEHAVIOUR, HE COMPLAINED ABOUT IT TO MR. WATERFIELD AND MR. CARLTON, WHERE HE "DID NOT SEEM TO GET ANY SATISFACTION" AND HE FINALLY REPORTED TO MR. SANDERSON, THE GENERAL MANAGER. HE TESTIFIED THAT MR. SANDERSON STATED THAT HE DID NOT WANT TO DO ANYTHING WHILE NEGOTIATIONS WERE GOING ON, OR CAUSE ANY HARD FEELINGS. MR. SANDERSON'S BEHAVIOUR, IN KEEPING WITH THIS ATTITUDE, WAS THAT HE TOOK NO MORE ACTION THAN THAT OF REPORTING MRS. FURLONG'S BEHAVIOUR TO MR. NETHERTON, THE UNION REPRESENTATIVE AND CHIEF NEGOTIATOR.

8. TO CONCLUDE THAT THE COMPANY, EVEN UP TO THE TIME OF THE SUSPENSION, WAS CONSIDERING DISCIPLINING THE COMPLAINANT BECAUSE OF HER UNION ACTIVITY, ONE WOULD HAVE TO CONCLUDE THAT THE LEAD GIRLS AND MR. MONK WERE ALL A PART OF THE CONSPIRACY.

9. WHILE I WOULD NOT CONCLUDE THAT HER OFFENCES WERE OF A PICAYUNE NATURE, OR INDEED TRIVIAL, THEY WERE UP TO THE INCIDENT OF MARCH 29TH, BASICALLY MINOR, BUT WHETHER THEY WERE INDEED JUST CAUSE FOR DISCHARGE IS NOT THE ISSUE BEFORE THIS BOARD. IT IS CLEAR THAT MR. MONK FELT THEM TO BE IMPORTANT, AND THAT BECAUSE OF THEIR IMPORTANCE IN HIS MIND, HE COMPLAINED TO HIS SUPERIORS, WHO WERE RELUCTANT TO TAKE ANY RASH STEP UNDER THE CIRCUMSTANCES UNTIL THE FINAL "OUTBURST" ON MARCH 29TH.

10. ON THE QUESTION OF THE IMPORTANCE OF THE "OUTBURST" ITSELF, IT IS NOT UP TO THIS BOARD TO JUDGE WHETHER OR NOT IT WAS A SERIOUS BREACH OF ACCEPTABLE BEHAVIOUR. IT IS HOWEVER QUITE CLEAR THAT IT WAS CONSIDERED BY MR. MONK AND THE LEAD GIRL TO BE QUITE SERIOUS, AND BECAUSE HE CONSIDERED IT SERIOUS, HE PROMPTLY WENT TO MR. CARLTON, AND SUBSEQUENTLY TO MR. WATERFIELD, URGING THAT SOME ACTION BE TAKEN. MR. WATERFIELD SUSPENDED THE COMPLAINANT, AND THE EVIDENCE SHOWS THAT HE IMMEDIATELY REPORTED THE INCIDENT TO MR. SANDERSON UPON HIS RETURN SOME DAYS LATER. THE EVIDENCE ALSO SHOWS THAT MR. SANDERSON, THROUGH HIS COUNSEL, MR. COOK, CONTACTED MR. NETHERTON ABOUT THE MATTER, SUGGESTING THAT IT BE DISCUSSED. AFTER RECEIVING MRS. FURLONG'S LETTER OF ENQUIRY AS TO HER STATUS, AND NOT HAVING HEARD FROM MR. NETHERTON, MR. SANDERSON INTERVIEWED THE COMPLAINANT, AT WHICH TIME, HE AND HE ALONE, DECIDED THAT SHE SHOULD BE DISCHARGED. IT IS CLEAR THAT DURING THE INTERVIEW, MR. SANDERSON DID NOT AGREE WITH THE REMARKS MADE BY MRS. FURLONG CONCERNING COMPETITION AMONG THE LEAD GIRLS. THE EVIDENCE SHOWS THAT HE CONCLUDED THAT THIS INDICATED WHAT WAS TO HIM AN UNDESIRABLE ATTITUDE WHICH CLEARLY, TOGETHER WITH THE COMPLAINTS HE HAD RECEIVED FROM THE OTHER LEVELS OF MANAGEMENT, CAUSED HIM TO DISCHARGE THE COMPLAINANT.

11. I WOULD CONCLUDE FROM ALL OF THE EVIDENCE PRESENTED TO THE BOARD THAT THE COMPLAINANT WAS DISCHARGED SOLELY BECAUSE OF WHAT THE RESPONDENT CONSIDERED TO BE HER GENERALLY UNCO-OPERATIVE AND SOMETIMES DEFIANT BEHAVIOUR. THERE IS NOT IN THE WHOLE OF THE TESTIMONY A TITTLE OF EVIDENCE TO INDICATE IN ANY WAY THAT HIDDEN SOMEWHERE IN THE MIND OF MANAGEMENT WAS A THOUGHT THAT SHE SHOULD BE DISCIPLINED BECAUSE OF HER UNION ACTIVITY.

12. BASED ON THE EVIDENCE, I CAN FIND NO BREACH OF SECTION 50(A) OF THE ACT, AND I WOULD HAVE DISMISSED THIS COMPLAINT.

13104-67-U: MR. REMI LEROUX (COMPLAINANT) V. CANADIAN BECHTEL LIMITED  
(SHERMAN MINE, TIMAGAMI PROJECT) (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: REMI LERIOUX AND ROY JAMES FOR THE COMPLAINANT,  
W. GIBSON GRAY, Q.C., J. P. BORDEN, P. B. ANDERSON AND J. A. CUNNINGHAM  
FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 13, 1967.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT HE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT THE RESPONDENT REFUSED TO RE-HIRE HIM ON MARCH 14TH, 1967 BECAUSE OF HIS UNION ACTIVITIES DURING HIS PREVIOUS PERIODS OF EMPLOYMENT WITH THE RESPONDENT. THE RESPONDENT DENIES THE ALLEGATION AND SUBMITS THAT IT EXERCISED ITS RIGHT TO REFUSE TO RE-HIRE THE COMPLAINANT BECAUSE THE COMPLAINANT, DURING HIS PREVIOUS EMPLOYMENT WITH THE RESPONDENT AT ITS TIMAGAMI JOB SITE, WAS AN UN-SATISFACTORY AND UNPRODUCTIVE WORKER.

2. AT THE HEARING, AS A PRELIMINARY ISSUE, THE BOARD ENTERTAINED THE REPRESENTATIONS OF THE PARTIES ON THE QUESTION AS TO WHETHER OR NOT THERE ARE APPROPRIATE GRIEVANCE AND ARBITRATION PROCESSES AVAILABLE TO THE PARTIES AND IF SO, WHETHER THIS MATTER SHOULD BE DEALT WITH UNDER THESE PROCESSES RATHER THAN AS A COMPLAINT UNDER SECTION 65 OF THE ACT.

3. WITH REFERENCE TO THIS ISSUE, THE RESPONDENT FILED WITH THE BOARD AT THE HEARING AS AN EXHIBIT A COPY OF A CURRENT COLLECTIVE AGREEMENT (HEREINAFTER REFERRED TO AS THE LOCAL AGREEMENT) IN EFFECT BETWEEN THE MECHANICAL CONTRACTORS OF SUDBURY AND DISTRICT AND LOCAL 800 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (HEREINAFTER REFERRED TO AS LOCAL 800). THERE WAS ALSO FILED AS PART OF THE SAME EXHIBIT A COPY OF THE COVERING LETTER SENT BY LOCAL 800 TO THE RESPONDENT ENCLOSING COPIES OF THE LOCAL AGREEMENT. THIS LETTER, DATED JULY 8TH, 1966, IS ADDRESSED TO A MR. W. GIBSON OF THE RESPONDENT COMPANY

AND IS SIGNED BY R. JAMES THE BUSINESS MANAGER OF LOCAL 800. AS WELL AS ENCLOSING COPIES OF THE LOCAL AGREEMENT, JAMES, IN HIS LETTER, REQUESTED THAT THE RESPONDENT COMPLY IMMEDIATELY WITH ALL MONETARY CLAUSES PROVIDED FOR IN THE SAID AGREEMENT. ACCORDING TO THE EVIDENCE, THE RESPONDENT DID NOT REPLY TO JAMES' LETTER OF JULY 8TH, 1966, BUT THE RESPONDENT HAS COMPLIED SINCE THAT TIME WITH THE MONETARY PROVISIONS OF THE LOCAL AGREEMENT.

4. ALTHOUGH COUNSEL FOR THE RESPONDENT ADMITS THAT THE RESPONDENT IS NOT A SIGNATORY OR A PARTY TO THE LOCAL AGREEMENT, HE ARGUES THAT THE FACT OF JAMES' COVERING LETTER OF JULY 8TH, 1966 AND THE REQUEST CONTAINED THEREIN, TAKEN TOGETHER WITH THE COMPLAINT BY THE RESPONDENT HAS THE EFFECT OF MAKING THE LOCAL AGREEMENT BINDING UPON THE RESPONDENT AND LOCAL 800. JAMES, WHO REPRESENTED THE COMPLAINANT AT THE HEARING, CONCURRED IN THE ARGUMENT OF COUNSEL FOR THE RESPONDENT.

5. IN THE CANADIAN MACHINERY CORPORATION LIMITED CASE 61 C.L.L.C. 918; C.L.S. 76-729, THE BOARD PLACED THE FOLLOWING INTERPRETATION ON THE DEFINITION OF "COLLECTIVE AGREEMENT" SET OUT IN SECTION 1(1)(c) OF THE ACT:

IN THE RESULT THEREFORE, WE ARE OF THE OPINION THAT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT MEANS AN AGREEMENT IN WRITING EXECUTED OR SIGNED BY THE PARTIES TO THE AGREEMENT. IN SO HOLDING WE MUST NOT BE UNDERSTOOD AS DEPARTING FROM OUR PREVIOUS VIEWS THAT THERE IS NO NECESSITY FOR A COLLECTIVE AGREEMENT TO BE A FORMAL AGREEMENT OR THAT SUCH AN AGREEMENT MIGHT NOT, IN SOME CIRCUMSTANCES, BE FOUND IN AN EXCHANGE OF CORRESPONDENCE BETWEEN THE PARTIES (SEE FOUNDATION COMPANY OF CANADA CASE (1957) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,078, C.L.S. 76-555).

6. THE ABOVE INTERPRETATION, WHICH HAS BEEN SUBSCRIBED TO IN SUBSEQUENT BOARD DECISIONS, MAKES IT CLEAR THAT NOT ONLY MUST THERE BE AN AGREEMENT IN WRITING BUT ALSO THAT AGREEMENT MUST BE EXECUTED OR SIGNED BY THE PARTIES IN ORDER TO MEET THE REQUIREMENTS OF A COLLECTIVE AGREEMENT UNDER THE ACT. IN THE INSTANT CASE THE RESPONDENT IS NOT A SIGNATORY TO THE LOCAL AGREEMENT. MOREOVER, THE RESPONDENT HAS NOT SIGNED ANY OTHER DOCUMENT OR LETTER WHICH COULD BE INTERPRETED AS INCORPORATING THE LOCAL AGREEMENT BY REFERENCE. ACCORDINGLY, DESPITE THE AGREEMENT OF THE PARTIES AS TO THE BINDING EFFECT OF THE LOCAL AGREEMENT UPON THEM, HAVING REGARD TO THE CONSIDERATIONS OUTLINED ABOVE, THE BOARD FINDS THAT THE RESPONDENT AND LOCAL 800 ARE NEITHER PARTIES TO NOR BOUND BY THE LOCAL AGREEMENT. IT LOGICALLY FOLLOWS THEREFORE THAT THE COMPLAINANT HAS NO REMEDY UNDER THE LOCAL AGREEMENT.

7. THERE WAS ALSO FILED WITH THE BOARD, AS AN EXHIBIT, A COPY OF A CURRENT COLLECTIVE AGREEMENT (HEREINAFTER REFERRED TO AS THE NATIONAL AGREEMENT) BETWEEN THE NEGOTIATING COMMITTEE FOR THE CANADIAN OPERATING



CONSTRUCTION CONTRACTORS AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO-CLC, (HEREINAFTER REFERRED TO AS THE UNITED ASSOCIATION) ON BEHALF OF ALL OF ITS CANADIAN LOCAL UNIONS. THE NATIONAL AGREEMENT BEARS THE SIGNATURES OF THE VICE-PRESIDENT OF THE RESPONDENT AND THE GENERAL PRESIDENT OF THE UNITED ASSOCIATION. WE WOULD MENTION THAT NO SUGGESTION WAS MADE AT THE HEARING BY JAMES, THE BUSINESS AGENT FOR LOCAL 800, THAT THE GENERAL PRESIDENT OF THE UNITED ASSOCIATION WAS WITHOUT AUTHORITY TO EXECUTE THE NATIONAL AGREEMENT ON BEHALF OF ALL OF THE UNITED ASSOCIATION'S CANADIAN LOCAL UNIONS INCLUDING LOCAL 800. ACCORDINGLY, THE NATIONAL AGREEMENT BEING IN WRITING AND SIGNED BY REPRESENTATIVES OF THE PARTIES, THE BOARD FINDS THAT IT IS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT AND THAT IT IS BINDING UPON THE RESPONDENT AND LOCAL 800. THEREFORE, IF THERE IS AN ALTERNATIVE REMEDY AVAILABLE TO THE COMPLAINANT IT MUST BE DERIVED FROM THE NATIONAL AGREEMENT. WE TURN THEREFORE NOW TO A CONSIDERATION OF THE RELEVANT PROVISIONS OF THAT AGREEMENT.

8. ARTICLE XIV OF THE NATIONAL AGREEMENT ESTABLISHES A GRIEVANCE AND ARBITRATION PROCEDURE. PARAGRAPH 58 OF THE ARTICLE READS IN PART:

THE NATIONAL ARBITRATION BOARD SHALL STAND DURING THE LIFE OF THIS AGREEMENT. ALL DISPUTES AND CONTROVERSIES AS TO THE MEANING OR INTERPRETATION OF ANY PROVISIONS OF THIS AGREEMENT, AND ALL MATTERS RELATING TO VIOLATIONS OF THIS AGREEMENT SHALL BE TREATED AS A GRIEVANCE AND DISPOSED OF IN ACCORDANCE WITH THE FOLLOWING STEPS:

THE FIRST STEP IS THAT ANY GRIEVANCE IS TO BE ADJUSTED BETWEEN REPRESENTATIVES OF THE LOCAL UNION AND THE EMPLOYER. THE SECOND STEP, IF THE GRIEVANCE IS NOT SETTLED WITHIN TEN DAYS, IS THAT IT IS TO BE ADJUSTED BETWEEN THE INTERNATIONAL REPRESENTATIVE OF THE UNITED ASSOCIATION AND THE CONTRACTOR OR CONTRACTORS CONCERNED. THE THIRD STEP, IF THE GRIEVANCE STILL IS NOT SETTLED, IS THAT IT IS TO BE SUBMITTED FOR ARBITRATION. THE MANNER AND MACHINERY FOR ARBITRATION IS SET OUT IN PARAGRAPH 58.

9. PARAGRAPH 12 OF ARTICLE V OF THE NATIONAL AGREEMENT READS:

THE UNION WILL FURNISH COMPETENT WORKMEN TO THE EMPLOYER ON REQUEST, PROVIDED, HOWEVER, THAT THE EMPLOYER SHALL HAVE THE RIGHT TO DETERMINE THE COMPETENCY AND QUALIFICATIONS OF SUCH APPLICANTS, AND TO DISCHARGE ANY EMPLOYEE FOR ANY JUST AND SUFFICIENT CAUSE. THE EMPLOYER SHALL RETAIN THE RIGHT TO REJECT ANY APPLICANT REFERRED BY THE LOCAL UNION. THE EMPLOYER SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE BY REASON OF HIS MEMBERSHIP IN THE UNION OR HIS PARTICIPATION IN ITS LAWFUL ACTIVITIES.

(THE UNDERLINING IS ADDED FOR EMPHASIS)

10. THE ABOVE PROVISION OF THE NATIONAL AGREEMENT CLEARLY PROHIBITS THE TYPE OF DISCRIMINATORY ACTION BY THE RESPONDENT OF WHICH THE COMPLAINANT IN HIS COMPLAINT TO THE BOARD ALLEGES THE RESPONDENT IS GUILTY. MOREOVER, THE GRIEVANCE AND ARBITRATION PROCEDURES CAN BE UTILIZED FOR ALL MATTERS RELATING TO VIOLATIONS OF THE AGREEMENT. ACCORDINGLY, THERE CAN BE NO QUESTION THAT A REMEDY IS AVAILABLE TO THE COMPLAINANT UNDER THE NATIONAL AGREEMENT. INDEED, IT WAS ADMITTED AT THE HEARING THAT ALREADY THE PARTIES HAVE COMPLIED WITH THE FIRST TWO STEPS OF THE GRIEVANCE PROCEDURE.

11. THE SOLE REMAINING MATTER FOR CONSIDERATION IS WHETHER, IN LIGHT OF ALL OF THE ABOVE CIRCUMSTANCES, THE COMPLAINANT SHOULD PURSUE HIS REMEDY UNDER THE NATIONAL AGREEMENT RATHER THAN BY WAY OF THIS COMPLAINT TO THE BOARD UNDER SECTION 65 OF THE ACT. IT HAS BEEN WELL ESTABLISHED IN A NUMBER OF PREVIOUS DECISIONS OF THE BOARD THAT WHERE THERE IS A COLLECTIVE AGREEMENT IN EFFECT AND A REMEDY IS AVAILABLE TO THE COMPLAINANT THROUGH THE GRIEVANCE AND ARBITRATION PROCEDURES ESTABLISHED BY THE AGREEMENT, THE COMPLAINANT, EXCEPT IN VERY SPECIAL CIRCUMSTANCES, MUST SEEK HIS REMEDY THROUGH THE PROCEDURES PROVIDED IN THE COLLECTIVE AGREEMENT (SEE WALLACE BARNES COMPANY LIMITED CASE 61 C.L.L.C. 928; SCARBORO BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 822; GENERAL BAKERIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 823).

12. IN THE INSTANT COMPLAINT THERE ARE NO SPECIAL CIRCUMSTANCES WHICH CAUSE THE BOARD TO DEPART FROM ITS ESTABLISHED POLICY AS OUTLINED ABOVE. MOREOVER, AS HAS ALREADY BEEN MENTIONED, THE COMPLAINANT HAS ALREADY COMPLETED THE FIRST TWO STAGES OF THE GRIEVANCE PROCEDURE PROVIDED UNDER THE NATIONAL AGREEMENT AND THERE IS NO IMPEDIMENT TO HIM NOW PROCEEDING TO ARBITRATION. THE BOARD THEREFORE IS OF THE OPINION THAT THIS COMPLAINT IS ONE WHICH PROPERLY SHOULD BE DEALT WITH UNDER THE GRIEVANCE AND ARBITRATION PROCEDURES OF THE NATIONAL AGREEMENT AND NOT BY THIS BOARD.

13. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

13149-67-U: THE PRINTING SPECIALTIES & PAPER PRODUCTS UNION, No. 466  
(COMPLAINANT) V. E. S. & A. ROBINSON (CANADA) LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

DECISION OF THE BOARD: JUNE 1, 1967.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS, NAMELY, THOSE PERSONS WHO COMPRISE THE MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT, EFFECTIVE JULY 1ST, 1965, WERE DEALT WITH CONTRARY TO SECTION 51(1) OF THE LABOUR RELATIONS ACT. MORE SPECIFICALLY, THE COMPLAINANT ALLEGES THAT:

"THE RESPONDENT DID BARGAIN WITH AND PURPORT TO ENTER INTO A COLLECTIVE AGREEMENT WITH 29 MEMBERS OF THE BARGAINING UNIT (IN THE CAMERON DEPARTMENT) OUT OF A BARGAINING UNIT OF ABOUT 400 PERSONS REPRESENTED BY THE COMPLAINANT; AND DID OBTAIN THE AGREEMENT OF THOSE 29 PERSONS TO ALTER THE TERMS OF THE EXISTING COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT IN SO FAR AS IT APPLIED TO THOSE 29 PERSONS WITHOUT THE CONSENT OR APPROVAL OF THE COMPLAINANT."

2. SECTION 9 OF THE COLLECTIVE AGREEMENT REFERRED TO ABOVE, CONTAINS THE PROCEDURE FOR THE PROCESSING OF GRIEVANCES AND FOR THE RESOLUTION OF GRIEVANCES OR DISPUTES BY A BOARD OF ARBITRATION WHOSE DECISION SHALL BE FINAL AND BINDING. IT SEEMS CLEAR FROM THE MATERIAL BEFORE THE BOARD THAT THE COMPLAINANT INTENDS TO LODGE A GRIEVANCE IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THIS COMPLAINT.

3. IN THE NATIONAL SHOWCASE CO. LTD. CASE, 61 C.L.L.C. 901, THE BOARD STATES AS FOLLOWS:

IT SEEMS TO US, THEREFORE, IN DETERMINING WHETHER WE SHOULD EXERCISE OUR DISCRETION UNDER SECTION 57, SUBSECTION 4, IT IS PROPER TO TAKE INTO ACCOUNT THE FACT THAT AN ALTERNATE REMEDY EXISTS. IN ADDITION, WHEN THIS REMEDY IS ONE WHICH THE PARTIES THEMSELVES HAVE AGREED TO AND, FURTHER, INVOLVES A PROCEDURE UNDER WHICH THE PARTIES AGREE TO ATTEMPT TO SETTLE THE DISPUTE THEMSELVES BEFORE BRINGING IN AN OUTSIDER, THAT IS, AN ARBITRATOR, WE HAVE NO HESITATION IN SAYING THAT WE OUGHT NOT TO PROCEED FURTHER UNDER SECTION 57, SUBSECTION 4. (NOW 65(4)).

WHILE IN THE SPECIAL CIRCUMSTANCES OF A PARTICULAR CASE WE MIGHT WELL BE PERSUADED TO TAKE THE CONTRARY VIEW, IN ALL THE CIRCUMSTANCES OF THIS CASE WE CAN FIND NO REASON TO DEPART FROM THE GENERAL PRINCIPLE ENUNCIATED ABOVE.

THE ABOVE STATEMENT APPLIES EQUALLY TO THE INSTANT CASE. REFERENCE IS ALSO MADE TO SCARBOROUGH BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, PAGES 822 AND 836, AND TO GENERAL BAKERIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, PAGE 823.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE COMPLAINANT DOES NOT, IN OUR OPINION, MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - SECTION 47(A)

13068-67-M: CANADA VALVE LIMITED (APPLICANT) V. PHILIP GIES FOUNDRY LIMITED; LOCAL #279, INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION; THE CANADA VALVE AND HYDRANT COMPANY, LIMITED; THE COMMITTEE AND THE HOURLY-PAID EMPLOYEES OF THE CANADA VALVE AND HYDRANT COMPANY, LIMITED (RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. ALAN PAGE AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: J. K. SIMS, Q.C., AND R. P. COPLAND FOR THE APPLICANT, EDWARD C. WITTHAMES FOR LOCAL #279, INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, IAN G. SCOTT AND JAMES BARKER FOR THE COMMITTEE AND THE HOURLY-PAID EMPLOYEES OF THE CANADA VALVE AND HYDRANT COMPANY, LIMITED.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: JUNE 2, 1967.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT, FORMERLY KNOWN AS PHILIP GIES FOUNDRY LIMITED, OPERATES A FOUNDRY AT 36 WATER STREET SOUTH IN THE CITY OF KITCHENER.
3. THE RESPONDENT, LOCAL #279, INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE APPLICANT DATED MAY 1ST, 1966 COVERING ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.
4. THE CANADA VALVE AND HYDRANT COMPANY, LIMITED OPERATED A MACHINE SHOP AT BRANTFORD AND WAS A PARTY TO AN AGREEMENT WITH A GROUP KNOWN AS THE COMMITTEE AND THE HOURLY-PAID EMPLOYEES OF THE CANADA VALVE AND HYDRANT COMPANY, LIMITED (HEREINAFTER REFERRED TO AS THE COMMITTEE). THE COMMITTEE AND THE CANADA VALVE AND HYDRANT COMPANY, LIMITED HAD ENTERED SUCCESSIVE AGREEMENTS SINCE 1961 WHICH TOOK THE FORM OF A COLLECTIVE AGREEMENT AND WHICH WAS UNDERSTOOD BY THE PARTIES TO BE A COLLECTIVE AGREEMENT. HOWEVER, AT THE HEARING IN THIS MATTER COUNSEL FOR THE COMMITTEE AGREED THAT THE COMMITTEE WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY THE AGREEMENT BETWEEN THE COMMITTEE AND CANADA VALVE AND HYDRANT COMPANY, LIMITED WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT.
5. ON JANUARY 2ND, 1967, THE APPLICANT PURCHASED THE BUSINESS OF THE CANADA VALVE AND HYDRANT COMPANY, LIMITED AND THE LATTER COMPANY CEASED MANUFACTURING. THE BUSINESS PURCHASED BY THE APPLICANT WAS TRANSFERRED TO 353 MANITOU DRIVE IN THE CITY OF KITCHENER AND THE MACHINE SHOP BUSINESS FORMERLY CARRIED ON AT BRANTFORD IS PRESENTLY CARRIED ON AT THE MANITOU DRIVE ADDRESS IN KITCHENER. IT IS AGREED BY THE PARTIES



THAT THERE IS NO INTERCHANGE OR INTERMINGLING OF EMPLOYEES BETWEEN THE WATER STREET SOUTH ADDRESS AND THE MANITOU DRIVE ADDRESS OF THE RESPONDENT.

6. COUNSEL FOR THE COMMITTEE ARGUED THAT THE BOARD SHOULD DETERMINE ON THE BASIS OF THE EVIDENCE THAT IN THE ABSENCE OF INTERCHANGE THAT THERE ARE CURRENTLY TWO BARGAINING UNITS OF EMPLOYEES OF THE APPLICANT AT KITCHENER, THAT IS, A SEPARATE BARGAINING UNIT AT EACH OF THE ABOVE ADDRESSES. IT IS AGREED THAT LOCAL 279, BECAUSE OF THE DESCRIPTION OF ITS BARGAINING UNIT IN THE COLLECTIVE AGREEMENT WITH THE APPLICANT, HAS A VALID CLAIM TO REPRESENT THE EMPLOYEES AT THE MANITOU DRIVE ADDRESS. HOWEVER, IN VIEW OF THE LONG BARGAINING RELATIONSHIP BETWEEN THE COMMITTEE AND THE CANADA VALVE AND HYDRANT COMPANY, LIMITED A REPRESENTATION VOTE SHOULD BE HELD TO DETERMINE WHETHER OR NOT THE EMPLOYEES AT THE MANITOU DRIVE ADDRESS WISH TO BE REPRESENTED BY LOCAL 279.

7. IN THE ALTERNATIVE, COUNSEL FOR THE COMMITTEE TOOK THE POSITION THAT IF THE BOARD SHOULD DETERMINE THAT THERE IS ONE BARGAINING UNIT COVERING ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER A REPRESENTATION VOTE SHOULD BE HELD WHEREIN ALL THE EMPLOYEES OF THE APPLICANT AT KITCHENER WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH LOCAL 279. THE COMMITTEE TOOK THE POSITION THAT THE BOARD WAS EMPOWERED TO DIRECT SUCH A VOTE PURSUANT TO THE POWERS GIVEN TO THE BOARD UNDER SECTION 47A SUBSECTION (7).

8. SECTION 47A(2) OF THE ACT READS AS FOLLOWS:

WHERE AN EMPLOYER WHO IS BOUND OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40 SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS. AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11.

9. IT WILL BE SEEN THAT ONLY A TRADE UNION WHICH WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE PREDECESSOR COMPANY IS ENTITLED TO GIVE TO THE APPLICANT IN THIS CASE NOTICE OF DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. SINCE IT IS ACKNOWLEDGED THAT THE COMMITTEE IS NOT A TRADE UNION THE COMMITTEE HAS NO RIGHTS UNDER SECTION 47A(2) OR UNDER ANY SUBSEQUENT SUB-SECTIONS OF SECTION 47A. WHILE THE COMMITTEE AND THE CANADA VALVE AND HYDRANT COMPANY, LIMITED MAY HAVE INNOCENTLY MISLED THEMSELVES INTO BELIEVING THAT THE AGREEMENT BETWEEN

THEM WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT, SUCH WAS NOT THE CASE AND THE COMMITTEE CAN CLAIM NO RIGHTS UNDER THE ACT ARISING FROM THE PROVISIONS OF ANY AGREEMENT WHICH IT HAD WITH THE PREDECESSOR COMPANY. IT THEREFORE FOLLOWS THAT THE COMMITTEE HAS NO GREATER RIGHTS IN THIS CASE THAN ANY GROUP OF EMPLOYEES OF THE APPLICANT AT KITCHENER.

10. SINCE THE EMPLOYEES OF THE PREDECESSOR COMPANY WERE NOT REPRESENTED BY A TRADE UNION NO CONTEST ARISES WITH RESPECT TO THE CLAIM OF LOCAL 279 TO REPRESENT "ALL EMPLOYEES AT KITCHENER" AND NO QUESTION ARISES UNDER SECTION 47A OF THE ACT REQUIRING THE BOARD TO DETERMINE WHAT CONSTITUTES A "LIKE" BARGAINING UNIT.

11. SINCE LOCAL 279 HAS THE ONLY LAWFUL CLAIM TO REPRESENT EMPLOYEES OF THE APPLICANT AT KITCHENER THE BOARD ACCORDINGLY DECLARES THAT LOCAL #279, INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION REPRESENTS ALL EMPLOYEES OF THE APPLICANT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALARIED STAFF, BEING THE UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BINDING UPON THE APPLICANT AND LOCAL 279.

DECISION OF BOARD MEMBER D. ALLAN PAGE:

JUNE 2, 1967.

WHILE I AGREE WITH THE DECISION, I SHOULD LIKE TO PLACE ON RECORD THE OBSERVATION THAT THIS PROVIDES YET ANOTHER EXAMPLE OF THE MANNER IN WHICH CERTAIN NARROWLY DRAWN PROVISIONS OF THE ACT DEPRIVE EMPLOYEES OF THE VERY FREEDOM OF DECISION WHICH THE ACT IS PRESUMABLY DESIGNED TO PROTECT.

INDEXED ENDORSEMENT - SECTION 79(2)

12960-67-M: RETAIL STORE EMPLOYEES UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CENTRAL SUPERMARKETS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: IAN SCOTT AND THOMAS PEES FOR THE APPLICANT; HYMAN SOLOWAY, R.C., AND WARREN K. WINKLER FOR THE RESPONDENT.

DECISION OF BOARD:

JUNE 20, 1967

1. THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF 79(2) OF THE LABOUR RELATIONS ACT AND HAS REQUESTED THE BOARD TO DETERMINE WHETHER OR NOT CERTAIN PERSONS EMPLOYED AT A STORE LOCATED AT THE CORNER OF THE BASELINE ROAD AND WOODCROFT AVENUE, OTTAWA, AND AT A STORE LOCATED AT THE INTERSECTION OF BLAIR ROAD AND THE BASELINE ROAD, ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE LABOUR RELATIONS ACT.

THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT WHEREIN THE APPLICANT IS RECOGNIZED AS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN THE STORES OWNED AND/OR OPERATED BY THE RESPONDENT IN THE GREATER OTTAWA DISTRICT (INCLUDING EASTVIEW) WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

2. THE RESPONDENT, BY WAY OF PRELIMINARY OBJECTION, TOOK THE POSITION THAT THE BOARD HAS NO JURISDICTION TO DEAL WITH THIS APPLICATION ON THE BASIS THAT IT IS A MATTER TO BE DECIDED BY A BOARD OF ARBITRATION WHICH COULD BE CONSTITUTED PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. IT IS THE RESPONDENT'S CONTENTION THAT THE PERSONS WITH WHOM WE ARE HERE CONCERNED ARE EMPLOYEES OF SHOPPERS CITY LIMITED WHICH IS A WHOLLY OWNED SUBSIDIARY OF THE RESPONDENT AND THE QUESTION OF WHETHER THE PERSONS EMPLOYED AT THE TWO LOCATIONS ARE, IN FACT, EMPLOYEES OF THE RESPONDENT IS A MATTER WHICH COULD BE DECIDED BY A BOARD OF ARBITRATION. IN ADDITION, THE RESPONDENT TOOK THE POSITION THAT EVEN IF THE PERSONS WITH WHOM WE ARE HERE CONCERNED ARE EMPLOYEES OF THE RESPONDENT THE INSTANT APPLICATION WOULD NOT BE A PROPER REMEDY BECAUSE THE STORES IN QUESTION DO NOT FALL WITHIN THE GEOGRAPHIC AREA OF THE COLLECTIVE AGREEMENT BINDING UPON THE PARTIES, AND SINCE THEY ARE NOT WITHIN THE GEOGRAPHIC AREA OF THE COLLECTIVE AGREEMENT NO QUESTION COULD ARISE CONCERNING THEM DURING THE PERIOD OF OPERATION OF SUCH COLLECTIVE AGREEMENT. IN ANY EVENT, WHILE THERE WAS NO AGREEMENT AS TO THE IDENTITY OF THE EMPLOYER THE RESPONDENT AGREED THAT THE PERSONS IN QUESTION WERE EMPLOYEES FOR THE PURPOSE OF THE ACT AND, THEREFORE, NO QUESTION COULD ARISE WITHIN THE MEANING OF SECTION 79(2).

3. SECTION 79(2) OF THE ACT READS AS FOLLOWS:

IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES.

4. IT IS COMMON GROUND BETWEEN THE PARTIES THAT THE ISSUE BETWEEN THEM AROSE DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT BINDING UPON THE APPLICANT AND THE RESPONDENT. WHILE THE QUESTION CAN BE PHRASED OTHERWISE, IT IS QUITE CORRECT TO SAY THAT THE REAL AND PRIMARY ISSUE BETWEEN THE PARTIES IS WHETHER THE PERSONS EMPLOYED AT THE TWO LOCATIONS ARE EMPLOYEES OF THE RESPONDENT.

5. THE BOARD IS OF THE VIEW THAT IT IS EMPOWERED NOT ONLY TO DECIDE WHETHER A PERSON IS AN EMPLOYEE BUT WHETHER OR NOT THE PERSON IS AN EMPLOYEE OF THE EMPLOYER WHO IS A PARTY TO THE COLLECTIVE AGREEMENT REFERRED TO IN SECTION 79(2) OF THE ACT. IT IS NOT THE BOARD'S FUNCTION

TO DETERMINE THE QUESTION OF THE EMPLOYMENT STATUS OF A PERSON IN SPACE, BECAUSE SUCH DETERMINATION WOULD BE IMPOSSIBLE. THE EMPLOYMENT STATUS OF A PERSON CAN ONLY BE DETERMINED WITH RELATION TO A SPECIFIC EMPLOYER. THE ADMISSION BY THE RESPONDENT THAT THE PERSONS IN QUESTION ARE EMPLOYEES FOR THE PURPOSE OF THE ACT IS A MEANINGLESS ADMISSION UNLESS THE IDENTITY OF THE EMPLOYER IS ALSO AGREED TO.

6. THIS ISSUE HAS BEEN PREVIOUSLY DEALT WITH BY THE BOARD IN THE LOBLAW GROCETERIAS Co. LIMITED CASE, BOARD FILE 9845-64-M, IN ITS DECISION OF MARCH 2ND, 1965, WHEREIN THE BOARD STATED AS FOLLOWS:

AS A PRELIMINARY OBJECTION TO THE BOARD'S JURISDICTION TO ENTERTAIN THIS APPLICATION, COUNSEL FOR THE INTERVENER ARGUES THAT THE ISSUE RAISED BY THE APPLICANT IS OUTSIDE THE SUBJECT-MATTER OF INQUIRY AUTHORIZED BY SECTION 79(2) OF THE ACT. HE MAINTAINS THAT THE INQUIRY AUTHORIZED BY THIS SECTION IS RESTRICTED TO THE ISSUE OF WHETHER A PERSON'S PARTICULAR KIND OF EMPLOYMENT QUALIFIES HIM AS AN EMPLOYEE FOR PURPOSES OF THE ACT. IN OTHER WORDS, WHETHER, FOR EXAMPLE, A PERSON IS OR IS NOT EMPLOYED IN A MANAGERIAL CAPACITY OR IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS OR IN ANY OTHER CAPACITY WHICH, BY VIRTUE OF SECTION 1 (3) (A) OR (B) OR SECTION 2, DISQUALIFIES HIM AS AN EMPLOYEE WITHIN THE MEANING OF THE ACT. IT IS HIS ARGUMENT THAT, APART FROM ANY OTHER SECTION, IF ANY, WHICH MIGHT BE AVAILABLE TO THE APPLICANT FOR THE DETERMINATION OF THE ISSUE RAISED IN THIS APPLICATION, SECTION 79(2) DOES NOT EMPOWER THE BOARD, AT LEAST WHERE THE EMPLOYMENT STATUS OF THE PERSON CONCERNED IS ADMITTEDLY IN THE SENSE ABOVE INDICATED THAT OF AN EMPLOYEE FOR PURPOSES OF THE ACT, TO INQUIRE INTO AND DECIDE WHETHER SUCH A PERSON IS AN EMPLOYEE OF A PARTICULAR EMPLOYER. HE CONTENDS THAT THE SECTION DOES NOT CONFER ANY JURISDICTION UPON THIS BOARD TO ADJUDICATE UPON THE REAL QUESTION BEING RAISED, WHICH, AS HE ARGUES, IS NOT WHETHER A PERSON IS AN EMPLOYEE AS STATED IN THE SECTION BUT WHETHER A PERSON, HERE THE RESPONDENT COMPANY, IS AN EMPLOYER. COUNSEL ON BEHALF OF THE RESPONDENT LOBLAWS SUPPORTS THE INTERVENER'S POSITION THAT THE SECTION IS NOT APPLICABLE TO THE ISSUES BEING RAISED IN THIS CASE.

THE MANIFEST OBJECT AND PURPOSE OF SECTION 79(2) IS TO PROVIDE THE PARTIES, WHILE THEY ARE BARGAINING FOR, OR DURING THE OPERATION OF A COLLECTIVE AGREEMENT BETWEEN THEM, WITH AN EFFECTIVE AND EXPEDITIOUS PROCEDURE BY WHICH THEY CAN OBTAIN A FINAL AND CONCLUSIVE ADJUDICATION, BINDING ON ALL INTERESTED PERSONS, OF ANY DIFFERENCES LIKELY TO ARISE BETWEEN THEM CONCERNING THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE OR A GUARD. IT IS SELF-EVIDENT THAT A VERY IMPORTANT AND OBVIOUS QUESTION WHICH



MAY ARISE IN SUCH CIRCUMSTANCES IS, OF COURSE, WHETHER A PERSON IS AN EMPLOYEE OF THE EMPLOYER CONCERNED IN THE BARGAINING OR IN THE COLLECTIVE AGREEMENT OR WHETHER SUCH PERSON IS AN EMPLOYEE OF AN EMPLOYER WHO IS NOT CONCERNED IN THE MATTER.

IT NEED HARDLY BE STATED THAT THE EXISTENCE OF AN EMPLOYMENT RELATIONSHIP WITH THE EMPLOYER FOR WHOSE EMPLOYEES A UNION HAS BARGAINING RIGHTS IS BASIC TO ANY OBLIGATION ON THE PART OF THE EMPLOYER TO BARGAIN UNDER SECTION 12 OF THE ACT. IT IS EQUALLY OBVIOUS THAT UNLESS EMPLOYEES HAVE AN EMPLOYMENT RELATIONSHIP WITH THE EMPLOYER WHO IS PARTY TO A COLLECTIVE AGREEMENT, THEY CANNOT, BY VIRTUE OF SECTION 35 OF THE ACT, BE BOUND BY SUCH AN AGREEMENT. A DISPUTE WHICH INVOLVES THE QUESTION AS TO WHETHER AN EMPLOYMENT RELATIONSHIP EXISTS BETWEEN AN EMPLOYEE AND THE EMPLOYER CONCERNED OR WITH ANOTHER EMPLOYER WHO IS A STRANGER TO THE BARGAINING OR COLLECTIVE AGREEMENT MAY WELL, IF IT CONTINUES UNRESOLVED, LEAVE THE PARTIES IN A DIFFICULT STALEMATE, INVOLVING CONSEQUENCES DETRIMENTAL TO GOOD INDUSTRIAL RELATIONS. APART FROM ANY OTHER CONSIDERATION, THEREFORE, WE FIND IT DIFFICULT TO BELIEVE THAT THE LEGISLATURE WAS UNMINDFUL OF THIS KIND OF PROBLEM ARISING BETWEEN THE PARTIES WHEN IT ENACTED THE SECTION.

WE ARE UNABLE TO ACCEDE TO THE ARGUMENT OF COUNSEL FOR THE INTERVENER THAT THE ISSUE IN THIS CASE FALLS WITHIN THE SUBJECT-MATTER GOVERNED BY SECTION 47A OR OF SECTION 66 OF THE ACT. PLAINLY, IN OUR VIEW, THE QUESTION HERE DOES NOT INVOLVE EITHER A SUCCESSION OF BARGAINING RIGHTS UNDER SECTION 47A NOR AN ASSIGNMENT OF WORK AS ENVISAGED BY THE JURISDICTIONAL DISPUTES PROCEDURES AVAILABLE UNDER SECTION 66. IT IS ALSO PLAIN THAT PERSONS AND EMPLOYERS WHO ARE NOT BOUND BY A COLLECTIVE AGREEMENT COULD NOT, AT LEAST WITHOUT THEIR CONSENT, BE AFFECTED OR BOUND BY ANY DECISION CONCERNING THE IDENTIFICATION OF AN EMPLOYER OF EMPLOYEES WHICH IS REACHED UNDER THE GRIEVANCE OR ARBITRATION PROCEDURE PROVIDED TO ADMINISTER THE AGREEMENT. IT CANNOT BE INFERRED, THEREFORE, THAT THE LEGISLATURE INTENDED TO LEAVE SUCH PROBLEMS TO BE SETTLED BY THE GRIEVANCE PROCEDURE OR ARBITRATION. FURTHER, APART FROM THOSE INSTANCES WHERE THE QUESTION ARISES AS AN ISSUE ON A REFERENCE FROM THE MINISTER OF LABOUR PURSUANT TO SECTION 79A OR IN CERTAIN REPRESENTATION PROCEEDINGS, E.G. IN A CERTIFICATION APPLICATION ETC., WE ARE NOT PERSUADED THAT ANY ALTERNATIVE STATUTORY PROCEDURES TO THAT OF SECTION 79(2) EXIST, AS CONTENDED BY COUNSEL FOR THE INTERVENER, BY WHICH A DECISION COULD BE OBTAINED ON A QUESTION RELATING TO THE DETERMINATION OF A PERSON'S EMPLOYER.

WE ARE ALSO UNABLE TO ATTACH ANY SPECIAL SIGNIFICANCE TO THE PRESENCE OF THE WORD "GUARD" IN JUXTAPOSITION WITH THE WORD "EMPLOYEE" IN SECTION 79(2). THE FACT THAT THE WORD "EMPLOYEE" IS FOLLOWED IN THE SECTION BY THE WORD "GUARD" WHICH, OF COURSE, IS USED IN THE SENSE OF DESCRIBING A PARTICULAR KIND OF EMPLOYEE RATHER THAN HIS EMPLOYMENT RELATIONSHIP, DOES NOT, IN OUR OPINION, DENOTE ANY LEGISLATIVE INTENT TO RESTRICT THE MEANING OF THE WORD "EMPLOYEE" TO THE DESIGNATION OF A PERSON, WHO IN THE SENSE IN WHICH THE WORD IS USED IN SECTIONS 1 (3) OR 2 IS AN EMPLOYEE FOR PURPOSES OF THE ACT, TO THE EXCLUSION OF ANY CONSIDERATION OF THAT PERSON'S EMPLOYMENT RELATIONSHIP.

IT CANNOT BE DOUBTED THAT THE FIRST AND INDISPENSABLE PREREQUISITE OF AN "EMPLOYEE" FOR PURPOSES OF THE ACT IS AN EMPLOYMENT RELATIONSHIP WITH THE "EMPLOYER" SOUGHT TO BE AFFECTED BY THE PARTICULAR PROVISION OF THE ACT UNDER CONSIDERATION. MOREOVER, NO CONSIDERATION OF THE MEANING OF THE WORD "EMPLOYEE" IN SECTION 79(2) CAN BE MEANINGFUL WITHOUT REFERENCE TO THE OTHER SECTIONS OF THE ACT WHERE THE WORD IS CLEARLY USED IN THE SENSE OF INDICATING THE EXISTENCE OF AN EMPLOYMENT RELATIONSHIP AS WELL AS DENOTING THE KIND OF EMPLOYMENT RELATIONSHIP NEEDED TO QUALIFY THE PERSON AS AN EMPLOYEE FOR PURPOSES OF THE ACT (SEE E.G. SECTION 1(2), 5, 6, 7, 8 AND 9). WE ARE, THEREFORE, AT A LOSS TO APPRECIATE HOW THE QUESTION OF WHETHER A PERSON IS AN EMPLOYEE FOR PURPOSES OF THE ACT CAN PROPERLY BE CONSIDERED APART FROM HIS EMPLOYMENT RELATIONSHIP WITH A PARTICULAR EMPLOYER. EMPLOYEES AS SUCH DO NOT EXIST IN SPACE BUT ONLY BY VIRTUE OF AN EMPLOYMENT RELATIONSHIP WITH THEIR EMPLOYER.

IN OUR VIEW, IT IS MORE CONSISTENT WITH THE LANGUAGE OF THE SECTION AND WITH THE SENSE IN WHICH THE WORD "EMPLOYEE" IS USED THROUGHOUT THE ACT AND WITH THE REMEDIAL PROCEDURE SOUGHT TO BE AFFORDED BY THE SECTION, TO CONSTRUE THE WORDS WHETHER A PERSON IS AN EMPLOYEE IN SECTION 79(2) AS CONFERRING PLENARY JURISDICTION ON THIS BOARD TO INQUIRE INTO ALL QUESTIONS RELATING TO THE STATUS OF A PERSON AS AN EMPLOYEE FOR PURPOSES OF THE ACT INCLUDING THE IDENTITY OF THE EMPLOYER WITH WHOM THE PERSON HAS THE EMPLOYMENT RELATIONSHIP THAN TO ADOPT THE RESTRICTIVE, AND WE THINK, NARROW-GAUGED INTERPRETATION ADVOCATED BY THE INTERVENER AND THE RESPONDENT LOBLAWS.

IN THE RESULT, WE ARE IMPELLED TO FIND THAT THE PRESENT APPLICATION AND THE ISSUES RAISED THEREIN COME WITHIN THE SUBJECT-MATTER OF INQUIRY AUTHORIZED BY SECTION 79(2).

THE BOARD ADOPTS THIS REASONING IN THE INSTANT CASE.

7. WHILE THE BOARD IS OF OPINION THAT IT HAS JURISDICTION TO ENTERTAIN AN APPLICATION UNDER SECTION 79(2) IN THE INSTANT CASE, ITS DETERMINATION OF WHETHER OR NOT THE PERSONS IN QUESTION ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT DOES NOT INCLUDE A DETERMINATION OF WHETHER OR NOT THE PERSONS ARE EMPLOYEES OF THE RESPONDENT FALLING WITHIN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BINDING UPON THE APPLICANT AND THE RESPONDENT. WE ARE OF OPINION THAT THE QUESTION OF WHETHER OR NOT SUCH PERSONS ARE EMPLOYED WITHIN THE GEOGRAPHIC AREA OF THE COLLECTIVE AGREEMENT IS A MATTER TO BE DETERMINED BY A BOARD OF ARBITRATION, CONSTITUTED PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT.

8. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR A CONTINUATION OF HEARING. THE BOARD FURTHER DIRECTS THAT THE REGISTRAR SERVE SHOPPERS CITY LIMITED WITH NOTICE OF THESE PROCEEDINGS IN ORDER THAT THAT COMPANY MAY ATTEND AND PARTICIPATE IF IT SO DESIRES.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

13127-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) v. SIL-JOE HOLDINGS LIMITED (RESPONDENT).

6. WITH RESPECT TO IRVING BART, IT IS OUR VIEW THAT HIS DUTIES AND RESPONSIBILITIES ARE MORE CLOSELY AKIN TO THOSE OF THE FOREMEN, FALCONE, IN THE SOVEREIGN CONSTRUCTION COMPANY LIMITED CASE, APRIL, 1967, BOARD FILE NO. 12242-66-R, THAN, SAY, TO THOSE OF BILL AND CHARRON IN THE UNI-FORM BUILDERS LTD. CASE, O.L.R.B. MONTHLY REPORT, MARCH, 1967, P. 1019 OR OF WILHELM IN THE PRE-CON MURRAY LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 328. MORE SPECIFICALLY, THE EVIDENCE DOES NOT IN OUR VIEW JUSTIFY THE INFERENCE THAT BART IS IN CHARGE ON A DAY-TO-DAY BASIS OF THE PROJECT ON WHICH THE RESPONDENT IS THE GENERAL CONTRACTOR OR THAT HE DIRECTS THE OTHER TRADES ON THE JOB, CHECKS THEIR WORK OR IS RESPONSIBLE FOR THE DAY-TO-DAY PROGRESS OF THE WHOLE JOB.

ON THE QUESTION OF ACTUAL AUTHORITY OVER THE MEN, IT IS TRUE BART HAS APPARENTLY HIRED SOME MEN, BUT HIS STATEMENT TO THE EXAMINER MUST BE VIEWED IN ITS ENTIRE CONTEXT. THUS, FOR EXAMPLE, JUST RECENTLY THE SUPERINTENDENT TOLD HIM THAT "IF A MAN CAME AROUND THE SUPERINTENDENT WOULD SPEAK TO HIM" - NOT, IT IS NOTED, BART. FURTHER, EVEN ON THE OCCASIONS THAT BART MAY HAVE HIRED IT IS OUR VIEW OF THE EVIDENCE THAT HE DID NOT DO SO ON HIS OWN VOLITION BUT, RATHER, WOULD FIRST SPEAK TO THE SUPERINTENDENT. FURTHER, BART HAS NEVER BEEN TOLD HE HAD AUTHORITY TO FIRE AND "HAS NEVER REALLY FIRED ANYONE". WHILE HE MIGHT REPORT TO THE SUPERINTENDENT THAT "A MAN WAS NOT WORKING ALONG WITH THE OTHER MEN" IT IS THE SUPERINTENDENT WHO TAKES ACTION ON SUCH REPORT, NOT BART. FINALLY, BART APPARENTLY HAS NO AUTHORITY TO GRANT AN EMPLOYEE A DAY OFF.

HAVING REGARD TO NORMAL COLLECTIVE BARGAINING PRACTICES IN THE CONSTRUCTION INDUSTRY, AND ON THE BASIS OF THE EVIDENCE AS SET

OUT IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES, WE HAVE COME TO THE CONCLUSION THAT BART DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

(JUNE 30, 1967).

13164-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BEAMSVILLE CONSTRUCTION LIMITED (RESPONDENT).

5. THE APPLICANT HAS APPLIED FOR AN "ALL EMPLOYEE" UNIT. THE PRESENT BOARD POLICY WITH RESPECT TO "ALL EMPLOYEE" UNITS IS SET OUT IN THE WINTER & SON CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1967, P. 889. HOWEVER, IN CASES WHERE THE BOARD IS SATISFIED THAT THE GRANTING OF AN "ALL EMPLOYEE" UNIT WOULD NOT LIKELY GIVE RISE TO A JURISDICTIONAL DISPUTE, THE BOARD HAS ACCEDED TO THE REQUEST FOR SUCH A UNIT. SEE THE JOHN VANDERVIES CASE, BOARD FILE NO. 12494-66-R. IN THE PRESENT CASE, THE RESPONDENT, A GENERAL CONTRACTOR, EMPLOYS CARPENTERS, CARPENTER APPRENTICES, BRICKLAYERS AND LABOURERS. IT IS OUR VIEW THAT THE GRANTING OF AN "ALL EMPLOYEE" UNIT IN THIS CASE WOULD NOT LIKELY LEAD TO ANY WORK ASSIGNMENT DISPUTE. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(JUNE 2, 1967).

13224-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 597 (APPLICANT) V. THOMAS FULLER CONSTRUCTION CO., (1958) LIMITED (RESPONDENT).

7. ON THE DATE OF THE MAKING OF THE APPLICATION, THE EMPLOYEES AFFECTED BY THIS APPLICATION DID NOT WORK BECAUSE OF HEAVY RAINS. FOR THE REASONS GIVEN IN KEYSTONE CONTRACTORS LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1966, P. 821, THIS APPLICATION IS DISMISSED.

(JUNE 19, 1967).



STATISTICAL TABLES FOR JUNE 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	JUNE 1967	1ST 3 MONTHS OF FISCAL YEAR 1967-68	1966-67
I. CERTIFICATION	78	256	276
II. DECLARATION TERMINATING BARGAINING RIGHTS	4	24	15
III. DECLARATION OF SUCCESSOR STATUS	1	1	2
IV. DECLARATION THAT STRIKE UNLAWFUL	6	15	5
V. DECLARATION THAT LOCK- OUT UNLAWFUL	8	11	-
VI. CONSENT TO PROSECUTE	19	45	33
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	9	26	29
VIII. MISCELLANEOUS	<u>6</u>	<u>14</u>	<u>16</u>
TOTAL	<u>131</u>	<u>392</u>	<u>376</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	JUNE 1967	1ST 3 MONTHS OF FISCAL YEAR 1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	91	271	223

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	JUNE 1ST 1967	3 MTHS OF 1967-68	FISCAL YEAR 1966-67
I. CERTIFICATION	99	263	250
II. DECLARATION TERMINATING BARGAINING RIGHTS	10	20	17
III. DECLARATION OF SUCCESSOR STATUS	-	1	2
IV. DECLARATION THAT STRIKE UNLAWFUL	3	12	4
V. DECLARATION THAT LOCK- OUT UNLAWFUL	2	3	-
VI. CONSENT TO PROSECUTE	10	20	24
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	44	32
VIII. MISCELLANEOUS	9	24	10
TOTAL	<u>143</u>	<u>387</u>	<u>339</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	JUNE 1967	1ST 3 MONTHS 1967-68	FISCAL YR. 1966-67	JUNE 1967	1ST 3 MONTHS 1967-68	FISCAL YR. 1966-67
<u>I. CERTIFICATION</u>						
GRANTED	67	191	174	1804	5789	3383
DISMISSED	25	55	45	1675	3570	2965
WITHDRAWN	7	17	28	83	350	463
TOTAL	<u>99</u>	<u>263</u>	<u>247</u>	<u>3562</u>	<u>9709</u>	<u>6811</u>
<u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	4	10	11	24	147	380
DISMISSED	6	10	6	79	117	140
WITHDRAWN	-	-	-	-	-	-
TOTAL	<u>10</u>	<u>20</u>	<u>17</u>	<u>103</u>	<u>264</u>	<u>520</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
	<u>JUNE</u>	<u>1ST 3 MONTHS OF FISCAL YEAR</u>		
	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>	
III. <u>DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
GRANTED	-	-	-	
DISMISSED	-	2	-	
WITHDRAWN	<u>3</u>	<u>10</u>	<u>4</u>	
TOTAL	<u>3</u>	<u>12</u>	<u>4</u>	
IV. <u>DECLARATION THAT LOCKOUT</u>				
<u>UNLAWFUL</u>				
GRANTED	-	-	-	
DISMISSED	1	1	-	
WITHDRAWN	<u>1</u>	<u>2</u>	<u>1</u>	
TOTAL	<u>2</u>	<u>3</u>	<u>-</u>	
V. <u>CONSENT TO PROSECUTE</u>				
GRANTED	1	2	3	
DISMISSED	2	2	1	
WITHDRAWN	<u>7</u>	<u>16</u>	<u>20</u>	
TOTAL	<u>10</u>	<u>20</u>	<u>24</u>	



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF APPLICATIONS</u>		
	<u>JUNE</u> <u>1967</u>	<u>1ST 3 MONTHS OF FISCAL YEAR</u> <u>1967-68</u>	<u>1966-67</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	3	6
POST-HEARING VOTE	4	16	10
BALLOTS NOT COUNTED	-	-	-

DISMISSED AFTER VOTE

PRE-HEARING VOTE	3	5	2
POST-HEARING VOTE	2	7	16
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>11</u>	<u>31</u>	<u>34</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>JUNE</u> <u>1967</u>	<u>1ST 3 MONTHS OF FISCAL YEAR</u> <u>1967-68</u>	<u>1966-67</u>
*RESPONDENT UNION SUCCESSFUL	-	1	3
RESPONDENT UNION UNSUCCESSFUL	2	5	9
TOTAL	<u>2</u>	<u>6</u>	<u>12</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JULY 1967

BARGAINING AGENTS CERTIFIED DURING JULY

NO VOTE CONDUCTED

12457-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 493 (APPLICANT) V. JOHN CLARK BUILDING ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(8 EMPLOYEES IN THE UNIT).

12654-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. WELPORT INVESTMENTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE BOILER ROOM IN THE NATIONAL TRUST BUILDING, 7-21 KING STREET EAST, AT METROPOLITAN TORONTO, SAVE AND EXCEPT BUILDING SUPERINTENDENT AND PERSONS ABOVE THE RANK OF BUILDING SUPERINTENDENT," (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 331).

12850-66-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL CIO CLC (APPLICANT) V. CENTRAL SUPER MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE MEAT DEPARTMENT IN ITS STORES AT LONDON, SAVE AND EXCEPT MEAT MANAGER, PERSONS ABOVE THE RANK OF MEAT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 335).

12896-66-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. RCA VICTOR COMPANY LTD. (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND, SAVE AND EXCEPT PLANT MANAGER, MANAGER OF PURCHASING, MANAGER OF MANUFACTURING, MANAGER OF ENGINEERING, MANAGER OF ACCOUNTING AND OFFICE, MANAGER OF PERSONNEL, MANAGER OF QUALITY CONTROL AND TECHNICAL SERVICES, MANAGER OF PRODUCTION CONTROL, MANAGER OF TIME STUDY METHODS AND ESTIMATING, ADMINISTRATOR OF EMPLOYMENT, ADMINISTRATOR OF BUDGET CONTROL, EMPLOYEES IN THE PERSONNEL DEPARTMENT, SECRETARY TO THE PLANT MANAGER, PLANT NURSE, TIME STUDY AND METHODS MEN, ASSISTANT FOREMEN AND PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN." (27 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

12926-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. RUBBERMAID (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(173 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 336 ).

12953-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF VAUGHAN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CLERICAL AND TECHNICAL EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

12954-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF VAUGHAN (RESPONDENT).

UNIT: "ALL CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CLERK ADMINISTRATOR, TOWNSHIP ENGINEER, DEPUTY CLERK, BUILDING ZONE ADMINISTRATOR, DEPUTY TREASURER, FIRE CHIEF, POLICE CHIEF, ASSISTANT TO DEPUTY CLERK, SECRETARY TO THE CLERK ADMINISTRATOR, SECRETARY TO THE DEPUTY CLERK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(21 EMPLOYEES IN THE UNIT).

13014-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. LAKEVIEW SALVAGE & WRECKING COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 342 ).

13070-67-R: LOCAL UNION No. 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC-OFL (APPLICANT) V. ELECTRO-VOX INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT JOB SUPERVISOR, PERSONS ABOVE THE RANK OF JOB SUPERVISOR, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 344 ).

13078-67-R: THE INTERNATIONAL BROTHERHOOD OF PULP SULPHITE AND PAPER MILL WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE ONTARIO PAPER COMPANY CAFETERIA IN THOROLD, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (20 EMPLOYEES IN THE UNIT).

13214-67-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 397 (APPLICANT) V. LAKEHEAD INSULATION & PLASTICS LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS LOCAL 95." (3 EMPLOYEES IN THE UNIT).

13258-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MUNRO COPPER MINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MINING OPERATIONS IN MUNROE TOWNSHIP IN THE DISTRICT OF COCHRANE, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT BOSS AND FOREMAN, OFFICE STAFF, PERSONS EMPLOYED IN THE ENGINEERING AND GEOLOGY DEPARTMENTS, CHIEF CHEMIST, CHEMISTS, SECURITY GUARDS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (110 EMPLOYEES IN THE UNIT).

13259-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PARKS AND RECREATION COMMISSION OF THE CITY OF KITCHENER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

13263-67-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) V. SURLUGA GOLD MINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE DEVELOPMENT STAGE OF ITS MINING OPERATIONS IN MICHIPICOTIN TOWNSHIP, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT BOSS AND FOREMAN, CHIEF CHEMIST, ASSISTANT CHIEF CHEMISTS, CHIEF SAMPLER, CHIEF ASSAYER, EMPLOYEES IN THE ENGINEERING AND GEOLOGY DEPARTMENTS, SECURITY GUARDS, OFFICE STAFF (INCLUDING CLERICAL STAFF EMPLOYED IN THE WAREHOUSE) AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 352 ).

13275-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. SYLVANIA ELECTRIC (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT SUPERVISORS, ASSISTANT FOREMEN AND FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR, ASSISTANT FOREMAN AND FOREMAN, WATCHMEN-GUARDS, OFFICE AND SALES STAFF, TECHNOLOGISTS, ENGINEERING AND TECHNICAL PERSONNEL, STUDENTS HIRED ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY OR COLLEGE, TRAINEES ON A GRADUATE TRAINING PROGRAMME, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13276-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. W.A. SHEAFFER PEN COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT GODERICH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

13277-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT) V. OTTO & BAYNE DECORATING & FLOOR COVERING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 1671, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA." (3 EMPLOYEES IN THE UNIT).

13281-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORNWALL ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (26 EMPLOYEES IN THE UNIT).

13283-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. CONTINENTAL MOTORS OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

13295-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORSEMAN WELDING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).



13296-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. W. A. SHEAFFER PEN COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GODERICH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (84 EMPLOYEES IN THE UNIT).

13297-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. M. SULLIVAN & SON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (22 EMPLOYEES IN THE UNIT).

13299-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC, (APPLICANT) V. ELECTRIC CONTROL AND ENGINEERING Co. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

13301-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HUMBER MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT WESTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 101 CANADIAN UNION OF OPERATING ENGINEERS." (261 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

13306-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WEST FRONT CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

13307-67-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LODGE #128 (APPLICANT) V. HAMILTON MARINE & ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

13308-67-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, C. L. C. (APPLICANT) V. ACTON LIMESTONE QUARRIES LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF ESQUESING, SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHER, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

(HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT DISPATCHERS, PERSONS ABOVE THE RANK OF DISPATCHER, AND OFFICE STAFF." (27 EMPLOYEES IN THE UNIT).

13311-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN WILBUR B. DRIVER CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

13317-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. RENOLD CHAINS MANUFACTURING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13321-67-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L, TORONTO (APPLICANT) V. MEREDITH LITHOGRAPHING LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13332-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FEDERAL MASONRY CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD DECLARED THAT THE TERM "SIMILAR EQUIPMENT" INCLUDES TOWER HOISTS AND FORKLIFTS.

13325-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. BROOKSIDE-PRICES DAIRY (TRENT-QUINTE) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT PLANT FOREMAN AND SALES SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SALES SUPERVISOR, OFFICE STAFF, DAIRY BAR EMPLOYEES AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

13327-67-R: HALTON JAIL EMPLOYEES ASSOCIATION (APPLICANT) V. THE CORPORATION OF THE COUNTY OF HALTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS JAIL, SAVE AND EXCEPT SERGEANTS, PERSONS ABOVE THE RANK OF SERGEANT, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

13331-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 1036 (APPLICANT) V. GREENSPOON BROS. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

13333-67-R: BRICKLAYERS & MASONS UNION, LOCAL No. 1 (APPLICANT) V. RYCO-CAPE LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONE-MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13337-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DASHWOOD INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLANT AT MOUNT BRYDGES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

13339-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN GROUND-SUPPORT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

13342-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE BOARD OF GOVERNORS, METROPOLITAN GENERAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 102 AND THE RESPONDENT, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT, PROFESSIONAL MEDICAL STAFF, REGISTERED NURSES, UNDER-GRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETICIANS, STUDENT DIETICIANS, TECHNICAL PERSONNEL, REGISTERED NURSING ASSISTANTS, WARD CLERKS, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY (20) HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" SHALL MEAN QUALIFIED PHYSIOTHERAPISTS AND OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS AND QUALIFIED LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS AND STUDENTS WHO ARE TAKING COURSES AT THE HOSPITAL TO OBTAIN A DIPLOMA OR ITS EQUIVALENT, TO QUALIFY THEM AS A TECHNICIAN AS REFERRED TO ABOVE.

13343-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. W. BIELECKI MASONRY CONTRACTOR (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13346-67-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L. - C.I.O., C.L.C., HAMILTON, ONTARIO (APPLICANT) V. J. V. MORRISON, WILSON PUBLIC HOUSE (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL TAPMEN AND WAITERS IN THE EMPLOY OF THE RESPONDENT AT THE WILSON PUBLIC HOUSE IN HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).



13347-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. PHOENIX MANUFACTURING COMPANY A DIVISION OF R & W HEARD HOLDINGS LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

13353-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CHRYSLER AIRTEMP CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, NURSES AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

13355-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. NEDAN FORMING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (22 EMPLOYEES IN THE UNIT).

13356-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ANGELLOTTI CONTRACTING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (4 EMPLOYEES IN THE UNIT).

13362-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIPS OF JOHNSON AND PLUMMER ADDITIONAL AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

13365-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORTHERN ONTARIO NATURAL GAS DIVISION OF NORTHERN AND CENTRAL GAS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAILEYBURY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

13366-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORTHERN ONTARIO NATURAL GAS DIVISION OF NORTHERN AND CENTRAL GAS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

13368-67-R: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197, A.F.L.-C.I.O.-C.L.C., HAMILTON, ONTARIO (APPLICANT) V. THE ALEX PARSONS INVESTMENT COMPANY LIMITED (RESPONDENT).

UNIT: "ALL BARTENDERS, TAPMEN, WAITERS AND WAITRESSES EMPLOYED BY THE RESPONDENT IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGE AT THE HOTEL KERBY IN BRANTFORD, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13379-67-R: BROTHERHOOD OF PAINTERS, DECORATORS, PAPERHANGERS OF AMERICA, LOCAL UNION 1891 (APPLICANT) V. RINO ZANATTA PAINTING CONTRACTOR (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

ALTHOUGH THE APPLICANT SEEKS AN ALL EMPLOYEE UNIT, IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD IS SATISFIED THAT THE APPLICANT SHOULD BE RESTRICTED TO ITS REGULAR CRAFT BARGAINING UNIT.

13380-67-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. CAPITAL MEAT CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT EASTVIEW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT).

13383-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) V. ALNOR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(9 EMPLOYEES IN THE UNIT).

13384-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597  
(APPLICANT) V. JAMES KEMP CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

13397-67-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. D. COAD CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT #1: "ALL BRICKLAYERS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13401-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SCHILL AND BENINGER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS PLUMBING AND HEATING OPERATIONS IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(6 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

13165-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TIMEX OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORE-LADY, OFFICE AND SALES STAFF." (141 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	134
NUMBER OF PERSONS WHO CAST BALLOTS	103
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	87
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	15

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12726-66-R: LOCAL UNION 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (A.F.L.-C.I.O.-C.L.C.) (APPLICANT) V. BACH-SIMPSON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WIARTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	33
NUMBER OF PERSONS WHO CAST BALLOTS	33
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	31
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	1

12993-67-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. DAISONS PRESS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE PRESS AND STEREOTYPE ROOMS IN THE RESPONDENT'S PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	15
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3



13166-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PONTIAC MANUFACTURING LIMITED (RESPONDENT). GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

NO VOTE CONDUCTED

13233-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. GIBSON WILLOUGHBY LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE BOILER ROOM AT THE HERBERT HOUSE, 335 BAY STREET, TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 347 ).

13286-67-R: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (APPLICANT) V. AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED (RESPONDENT). (2 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 355 ).

13289-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 (APPLICANT) V. MERCHANTS' SPEEDY DELIVERY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (11 EMPLOYEES).

13300-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE UNIVERSITY OF WATERLOO (RESPONDENT) V. THE UNIVERSITY OF WATERLOO EMPLOYEES UNION LOCAL UNION 793 CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER). (21 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 356 ).

13344-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BEACH GROVE GOLF AND COUNTY CLUB LIMITED (RESPONDENT). (35 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 357 ).

13387-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL UNION 1669 (APPLICANT) V. ATLAS CONSTRUCTION CO LIMITED (RESPONDENT).  
(2 EMPLOYEES).

13389-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL UNION 1669 (APPLICANT) V. L. ROCCA CONSTRUCTION COMPANY LTD.  
(RESPONDENT). (5 EMPLOYEES).

13409-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL 1988 (APPLICANT) V. NORRIS WILLIAMS SMITH FALLS, ONT. (RESPONDENT).  
(3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12941-67-R: LOCAL UNION 326, METRO. TORONTO, ONTARIO, INTERNATIONAL UNION  
OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF  
AMERICA, AFL-CIO-CLC (APPLICANT) V. BREWERS' WAREHOUSING COMPANY LIMITED  
(RESPONDENT). GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL WAREHOUSE CLERKS, EMPLOYED BY THE RESPONDENT AT ITS WAREHOUSE  
AT 1015 LAKESHORE BLVD. EAST, METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE  
STAFF AND PERSONS OF A SUPERVISORY CAPACITY SUCH AS FOREMAN OR MANAGER,  
THOSE ABOVE THE RANK OF FOREMAN OR MANAGER, HAVING THE AUTHORITY TO EMPLOY  
OR DISCHARGE OR DISCIPLINE EMPLOYEES." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

13209-67-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 OF THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA  
(APPLICANT) V. RAY'S HAULAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FONTHILL, SAVE AND EXCEPT FOREMEN,  
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED  
FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL  
VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

13284-67-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504 (APPLICANT) V. CHARLES R. BISCOMBE LIMITED (RESPONDENT).  
(4 EMPLOYEES).

13334-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. VAN LEISHOUT CONSTRUCTION LTD. (RESPONDENT).  
(9 EMPLOYEES).

13374-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. RAY - MORO CONSTRUCTION COMPANY (RESPONDENT).  
(3 EMPLOYEES).

13421-67-R: BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL 33, OWEN SOUND (APPLICANT) V. MONTEITH - McGRATH LTD.  
(14 EMPLOYEES).

13426-67-R: NURSES' ASSOCIATION OF THE BOROUGH OF YORK HEALTH DEPARTMENT (APPLICANT) V. BOARD OF HEALTH, BOROUGH OF YORK (RESPONDENT).  
(30 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING JULY

12872-66-R: RONALD JAMES ROBERTS (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE COMPANY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS		23
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	6	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	13	

13130-67-R: GERARDO PANNOZZO (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT).  
(GRANTED).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF TWENTIETH CENTURY MASONRY COMPANY ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET,

AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET, ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	7

13135-67-R: GIACOMO LA POSTA (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 358 ).

13170-67-R: JOHN SALAJKA (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206 (RESPONDENT). (17 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 360 ).

13310-67-R: BYRON FROUDE AND R. (DICK) HAYWARD (APPLICANTS) V. PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (RESPONDENT) V. E. S. AND A. ROBINSON (CANADA) LIMITED (INTERVENER). (506 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 363 ).

13373-67-R: JAMES SHEPPARD LEN BEECH GEORGE EVERETT (APPLICANTS) V. OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (RESPONDENT) V. BP CANADA LIMITED (INTERVENER). (GRANTED). (3 EMPLOYEES).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JULY

13196-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. SILVERWOOD DAIRIES LIMITED (RESPONDENT) V. SILVERWOOD DAIRIES EMPLOYEES ASSOCIATION (BRANTFORD BRANCH) (PREDECESSOR TRADE UNION). (GRANTED).

13335-67-R: LOCAL UNION 303 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. PENZER PRODUCTS LIMITED (RESPONDENT) V. PENZER PRODUCTS EMPLOYEE'S ASSOCIATION (PREDECESSOR TRADE UNION). (GRANTED).



13361-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CLEAVER-BROOKS OF CANADA LIMITED (RESPONDENT) V. CLEAVER-BROOKS OF CANADA LIMITED EMPLOYEES' FEDERATION (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JULY

13261-67-U: DUFFERIN MATERIALS & CONSTRUCTION LTD. 2700 DUFFERIN STREET, TORONTO 19, ONTARIO (TORONTO EQUIPMENT REPAIR DIVISION) (APPLICANT) V. TEAMSTERS' LOCAL UNION No. 230 READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENT). (WITHDRAWN).

13262-67-U: DUFFERIN MATERIALS & CONSTRUCTION LTD. 2700 DUFFERIN STREET, TORONTO 19, ONTARIO. (TORONTO MATERIALS DIVISION) (APPLICANT) V. TEAMSTERS' LOCAL UNION No. 230 READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENT). (WITHDRAWN).

13349-67-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) V. CERTAIN EMPLOYEES OF THE APPLICANT - MEMBERS OF THE UNITED ASSOCIATION OF JOURNEMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA NAMED ON THE ATTACHED LIST (RESPONDENT). (WITHDRAWN).

13370-67-U: DOMINION RUBBER COMPANY LIMITED, LINDSAY TEXTILE PLANTS (APPLICANT) V. ROBERT BEVERLY ADAIR, ET AL (RESPONDENTS). (WITHDRAWN).

13410-67-U: WESTEEL-ROSCO LIMITED (FORMERLY ROSCO METAL PRODUCTS LIMITED) (APPLICANT) V. UNITED STEELWORKERS OF AMERICA, LOCAL 6448 (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 365 ).

APPLICATIONS FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING JULY

13237-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. S. McCORD & Co. LTD. (RESPONDENT). (WITHDRAWN).

13239-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. CANADA BUILDING MATERIALS LIMITED (RESPONDENT). (WITHDRAWN).

13241-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. TESKY READY-MIX LIMITED (RESPONDENT). (WITHDRAWN).

13243-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. COMMUNITY BUILDING SUPPLIES LIMITED (RESPONDENT). (WITHDRAWN).

13245-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. H. JONES BUILDING SUPPLIES LIMITED (RESPONDENT). (WITHDRAWN).

13247-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. GENERAL CONCRETE LIMITED (RESPONDENT). (WITHDRAWN).

13249-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. PREMIER BUILDING MATERIALS LIMITED (RESPONDENT). (WITHDRAWN).

13251-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. RICHVALE READY MIX COMPANY (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO INSTITUTE PROSECUTION DISPOSED OF DURING JULY

13132-67-U: UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 514 (APPLICANT) V. SCM (CANADA) LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 367)

13133-67-U: UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 514 (APPLICANT) V. SCM (CANADA) LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 372)

13211-67-U: IROQUOIS HOTEL LONDON LTD. (APPLICANT) V. LONDON MUSICIANS UNION, LOCAL 279 OF THE AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 375)

13238-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. S. McCORD & Co. LTD. (RESPONDENT). (WITHDRAWN).

13240-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. CANADA BUILDING MATERIALS LIMITED (RESPONDENT). (WITHDRAWN).

13242-67-U: READY-MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. TESKEY READY-MIX LIMITED (RESPONDENT). (WITHDRAWN).

13244-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. COMMUNITY BUILDING SUPPLIES LIMITED (RESPONDENT). (WITHDRAWN).

13246-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. H. JONES BUILDING SUPPLIES LIMITED (RESPONDENT). (WITHDRAWN).

13248-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. GENERAL CONCRETE LIMITED (RESPONDENT). (WITHDRAWN).

13250-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. PREMIER BUILDING MATERIALS LIMITED (RESPONDENT). (WITHDRAWN).

13252-67-U: READY-MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, TEAMSTERS' LOCAL UNION No. 230 (APPLICANT) V. RICHVALE READY MIX COMPANY (RESPONDENT). (WITHDRAWN).

13254-67-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. JACK SCHWEBEL, AND MODERN FOOTWEAR COMPANY, DIVISION OF JACK SCHWEBEL LIMITED (RESPONDENT). (WITHDRAWN).

13293-67-U: FUR & LEATHER WORKERS' UNION, LOCAL 82 AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. MODERN FOOTWEAR COMPANY, DIVISION OF JACK SCHWEBEL LIMITED (RESPONDENT). (WITHDRAWN).

13315-67-U: CRUMP MECHANICAL CONTRACTING LIMITED (APPLICANT) V. DAVID CLARK (RESPONDENT). (WITHDRAWN).

13386-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF WELLAND (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JULY

12911-66-U: THE CANADIAN UNION OF SHIPBUILDING & MARINE WORKERS (C.N.T.U.), (COMPLAINANT) V. COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING & ENGINEERING LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 376).

12950-67-U: WILLIAM EWING (COMPLAINANT) V. CRUSH BEVERAGES LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 380).

13009-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. JET METAL PRODUCTS LIMITED (RESPONDENT). (WITHDRAWN).

13063-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. JET METAL PRODUCTS LIMITED (RESPONDENT). (WITHDRAWN).

13090-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. INDALEX LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 383).

13163-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. C. & M. PRODUCTS LTD. (RESPONDENT). (GRANTED).

.. AND ..

13195-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. C. & M. PRODUCTS LTD. (RESPONDENT). (GRANTED).

13219-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. C. & M. PRODUCTS LTD. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 390).

13216-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. USARCO LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 398).

13218-67-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 210 (COMPLAINANT) V. MAITLAND MANOR LTD. (RESPONDENT). (WITHDRAWN).

13320-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. TIMEX OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

13336-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. UNIVERSAL HANDLING EQUIPMENT COMPANY (RESPONDENT). (WITHDRAWN).

13345-67-U: JOHN KAPOUTSIS (COMPLAINANT) V. GIBSON WILLOUGHBY LIMITED (RESPONDENT). (WITHDRAWN).

13359-67-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. HI WAY MARKET LIMITED (RESPONDENT). (WITHDRAWN).

13382-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. WEST WILLOW NURSING HOME (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

12927-67-M: GAETZ FORD SALES LIMITED (APPLICANT) V. LOCAL 512, AMAL GENERAL WORKERS UNION LOCAL 1644 (RESPONDENT).

13351-67-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WESTEEL-ROSCOE LIMITED (RESPONDENT). (DISMISSED).



APPLICATION FOR DETERMINATION UNDER SECTION 79A DISPOSED OF DURING JULY

13186-67-M: DUPATE CANADA LIMITED (EMPLOYER) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA LOCAL 222 (TRADE UNION).

(SEE INDEXED ENDORSEMENT PAGE 403).

JURISDICTIONAL DISPUTES

13309-67-JD: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (COMPLAINANT) V. CRUMP MECHANICAL CONTRACTING LIMITED; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILLWRIGHTS LOCAL 2309; INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (RESPONDENTS). (WITHDRAWN).

(SEE INDEXED ENDORSEMENT PAGE 408).

13330A-67-JD: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1747 (COMPLAINANT) V. GAMBIN BROTHERS LTD. AND WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13159-67-R: LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BEACHELL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 409).

13210-67-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 410).

INDEXED ENDORSEMENTS - CERTIFICATION

12654-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. WELPORT INVESTMENTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: J. SULLIVAN FOR THE APPLICANT, EDWARD FOX FOR THE RESPONDENT, AND ROBERT HOOD FOR A GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
O. HODGES: JULY 20, 1967.

2. THE BOARD FURTHER FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE BOILER ROOM IN THE NATIONAL TRUST BUILDING, 7-21 KING STREET EAST, AT METROPOLITAN TORONTO, SAVE AND EXCEPT BUILDING SUPERINTENDENT AND PERSONS ABOVE THE RANK OF BUILDING SUPERINTENDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. A STATEMENT OF OBJECTION OR PETITION WAS FILED IN OPPOSITION TO THE APPLICATION HEREIN. THE BOARD INQUIRED INTO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP HEREIN SO AS TO MAKE IT NECESSARY TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 11TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

CERTIFICATE WILL BE ISSUED TO THE APPLICANT.

DECISION OF BOARD MEMBER W. J. RWIN: JULY 20, 1967.

DISSENT:

1. THE BARGAINING UNIT CONSISTS OF THREE EMPLOYEES ON THE DATE OF APPLICATION. ON THE EVIDENCE BEFORE ME, THERE IS REAL DOUBT IN MY MIND THAT THE MAJORITY OF THESE EMPLOYEES DESIRE THE APPLICANT UNION TO BE THEIR BARGAINING AGENT. IT IS ESSENTIAL THAT NO SUCH DOUBT EXIST IF THE PARTIES ARE TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT AS REQUIRED UNDER THE PROVISIONS OF SECTION 12 OF THE LABOUR RELATIONS ACT.

3. FOR THESE REASONS, I WOULD HAVE DIRECTED THAT A REPRESENTATION VOTE BE CONDUCTED TO ASCERTAIN THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT.

12781-66-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. of T.  
APPLICANT: W. KILMER VAN NOSTRAND CO. LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 2007 (UNIT);

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: T. LEES AND J. PAYNE FOR THE APPLICANT; B. W. BINNING, W. S. COOK, P. PALMER AND N. ANDERSON FOR THE RESPONDENT; AND H. A. HERRON AND J. F. KENNEDY FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 11, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

. . .

3. THE BARGAINING UNIT PROPOSED BY THE APPLICANT WOULD INCLUDE ALL GARAGE AND MAINTENANCE EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN. THE RESPONDENT WOULD RESTRICT THE BARGAINING UNIT TO ITS PREMISES ON WILSON AVENUE IN THE BOROUGH OF NORTH YORK AND, IN ADDITION, WOULD EXCLUDE OFFICE STAFF AND EMPLOYEES COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT. THE RESPONDENT HAS TWO GARAGES AT ITS PREMISES ON WILSON AVENUE, ALONG WITH AN ASPHALT PLANT AND A CEMENT BATCHER PLANT AND OTHER FACILITIES. THE SOUTH GARAGE IS USED PRIMARILY FOR SERVICING ITS READY MIX EQUIPMENT, AND THE NORTH GARAGE FOR SERVICING ITS HEAVY CONSTRUCTION EQUIPMENT. IT IS AGREED THAT SOME EMPLOYEES WORKING AT THE WILSON AVENUE PREMISES WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, EFFECTIVE APRIL 1, 1964. IT IS ALLEGED BY THE APPLICANT AND THE INTERVENER, BUT DENIED BY THE RESPONDENT, THAT EMPLOYEES WORKING IN THE NORTH GARAGE WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION AND A COUNCIL OF TRADE UNIONS, MADE THE 8TH DAY OF JUNE, 1964. ALTHOUGH BOTH AGREEMENTS HAVE NOW CEASED TO OPERATE, THE UNIONS CONCERNED CONTINUE TO REPRESENT THE EMPLOYEES COVERED BY THE AGREEMENTS.

4. AFTER CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, IT IS THE BOARD'S VIEW THAT THE BARGAINING UNIT SHOULD BE DESCRIBED IN TERMS OF ALL EMPLOYEES AT THE RESPONDENT'S PREMISES ON WILSON AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT THOSE FOR WHOM THE APPLICANT OR THE INTERVENER PRESENTLY HAVE BARGAINING RIGHTS. THE QUESTION THEREFORE IS, WHAT EMPLOYEES OF THE RESPONDENT AT ITS WILSON AVENUE OPERATIONS ARE COVERED BY THE COLLECTIVE AGREEMENT BINDING ON THE INTERVENER AND THE RESPONDENT.

5. THE BOARD HAS GIVEN VERY ANXIOUS CONSIDERATION TO THIS QUESTION. THE EMPLOYEES WHO, IT IS ALLEGED, ARE COVERED BY THE AGREEMENT WORK AT OR OUT OF THE NORTH GARAGE. THEY CONSIST OF THREE FULL TIME MECHANICS AND SIX PERSONS WHO, IN THE SUMMER, OPERATE CONSTRUCTION EQUIPMENT BUT WHO, IN THE WINTER AND INCLUDING THE DATE OF THE MAKING OF THIS APPLICATION, WORK IN THE SHOP OR THE YARD DOING ROUGH MAINTENANCE OF THE EQUIPMENT, SNOW REMOVAL, YARD MAINTENANCE AND ASSORTED ODD JOBS. THERE ARE ALSO TWO OTHER PERSONS, A FLOAT DRIVER AND A GAS TRUCK DRIVER, WHO APPEAR TO BE SIMILARLY ENGAGED IN THE WINTER TIME.

6. THE RECOGNITION CLAUSE OF THE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT READS AS FOLLOWS:

THE ASSOCIATION, ON BEHALF OF ITS MEMBER COMPANIES, AGREES TO RECOGNIZE THE COUNCIL AS THE COLLECTIVE BARGAINING AGENT FOR ALL EMPLOYEES OF THE MEMBERS OF THE ASSOCIATION WHILE WORKING WITHIN THE BOUNDARIES OF THE MUNICIPALITY OF METROPOLITAN TORONTO AND THE TOWNSHIP OF TORONTO, AND ITS EXTENSION NORTHWARD TO NO. 7 HIGHWAY, AND IN THAT PORTION OF THE TOWNSHIP OF TORONTO GORE, LYING BETWEEN THE MUNICIPALITY OF METROPOLITAN TORONTO AND THE TOWNSHIP OF TORONTO AND SOUTH OF NO. 7 HIGHWAY, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, TEMPORARY SHOP EMPLOYEES, ENGINEERING STAFF AND SECURITY GUARDS.

THE FIRST CLAUSE OF THE PREAMBLE TO THE COLLECTIVE AGREEMENT PROVIDES AS FOLLOWS:

WHEREAS THE ASSOCIATION, ACTING ON BEHALF OF ITS MEMBERS, AND THE COUNCIL, ACTING ON BEHALF OF ITS MEMBER UNIONS, WISH TO MAKE A COMMON COLLECTIVE AGREEMENT, WITH RESPECT TO CERTAIN EMPLOYEES OF THE MEMBERS OF THE ASSOCIATION ENGAGED IN ROAD AND PARKING LOT CONSTRUCTION, PAVING, ETC. AND ALL WORK INCIDENTAL THERETO, AND TO PROVIDE FOR AND ENSURE, UNIFORM INTERPRETATION AND APPLICATION IN THE ADMINISTRATION OF THE COLLECTIVE BARGAINING AGREEMENT;

THE AGREEMENT ALSO PROVIDES IN SCHEDULE A AS FOLLOWS:

3. GENERAL.

(A) IT IS UNDERSTOOD THAT WHEN ANY OF THE ABOVE MACHINE OPERATORS ARE TAKEN INTO THE SHOP DURING THE WINTER PERIOD, THE RATE FOR SUCH EMPLOYEE WILL BE WORKED OUT BETWEEN THE EMPLOYEE CONCERNED AND THE EMPLOYER IN EACH CASE.

7. WE HAVE COME TO THE CONCLUSION THAT THE SIX OPERATORS, THE FLOAT DRIVER AND THE GAS TRUCK DRIVER FALL UNDER THE EXCLUSION OF "TEMPORARY SHOP EMPLOYEES" AND ACCORDINGLY ARE NOT COVERED BY THE COLLECTIVE AGREEMENT. ON THE OTHER HAND, WE FIND THAT THE THREE FULL TIME MECHANICS ARE ENGAGED IN "WORK INCIDENTAL" TO "ROAD AND PARKING LOT CONSTRUCTION, PAVING, ETC." WITHIN THE MEANING OF THE CLAUSE IN THE PREAMBLE TO THE SAID AGREEMENT. IT IS OUR FURTHER VIEW THAT THE EXCLUSION OF "TEMPORARY SHOP EMPLOYEES" IN ARTICLE 11 OF THE AGREEMENT IMPLIES THAT PERMANENT OR FULL TIME SHOP EMPLOYEES ARE COVERED BY THE SAID AGREEMENT. WE FIND FURTHER, THEREFORE, THAT THE THREE FULL TIME MECHANICS IN THE NORTH GARAGE, TAYLOR, LONGFIELD



AND WATT, ARE COVERED BY THE COLLECTIVE AGREEMENT. AT THIS POINT WE BELIEVE IT SHOULD BE RECORDED THAT VERY LITTLE EVIDENCE WAS ADDUCED WITH RESPECT TO THE COVERAGE OF THE AGREEMENT AND OUR CONCLUSIONS ARE BASED PRIMARILY ON WHAT IS PRESENTLY BEFORE THE BOARD AND THE WORDING OF THE AGREEMENT ITSELF.

8. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PREMISES ON WILSON AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND EMPLOYEES FOR WHOM THE APPLICANT AND THE INTERVENER PRESENTLY HOLD BARGAINING RIGHTS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE RESPONDENT FILED A LIST CONTAINING 26 NAMES. JOHN THOMPSON, WHOSE NAME APPEARS ON SCHEDULE D, WAS NOT EMPLOYED DURING THE MONTH IMMEDIATELY PRECEDING FEBRUARY 20, 1967, THE DATE OF THE MAKING OF THE APPLICATION, AND WOULD NOT THEREFORE BE INCLUDED FOR PURPOSES OF THE COUNT. TAYLOR, LONGFIELD AND WATT ARE NOT, OF COURSE, EMPLOYEES INCLUDED IN THE BARGAINING UNIT. THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE 22 EMPLOYEES IN THE BARGAINING UNIT.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 28TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSES OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. THE DATE OF THE REPRESENTATION VOTE AND THE EMPLOYEES OF THE RESPONDENT ELIGIBLE TO VOTE WILL BE DETERMINED BY THE BOARD AFTER FURTHER REPRESENTATIONS FROM THE PARTIES.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12850-66-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL CIO CLC (APPLICANT) v. CENTRAL SUPER MARKETS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT HEARING: L. V. PATHE AND T. B. SHELDON FOR THE APPLICANT, AND D. G. PYLE AND R. KILROY FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: JULY 20, 1967.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, DATED JUNE 12TH, 1967, AND THE WRITTEN REPRESENTATIONS OF THE RESPONDENT AND THE APPLICANT, DATED RESPECTIVELY JUNE 19TH, 1967, AND JUNE 22ND, 1967, THE BOARD FINDS THAT BILL PHILLIPS, MEAT MANAGER, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE MEAT DEPARTMENT IN ITS STORES AT LONDON, SAVE AND EXCEPT MEAT MANAGER, PERSONS ABOVE THE RANK OF MEAT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 21ST, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77 (2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.

CERTIFICATE WILL ISSUE TO THE APPLICANT

DECISION OF BOARD MEMBER D. B. ARCHER-

JULY 20, 1967

DISSENT. I WOULD FIND ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES THAT BILL PHILLIPS, MEAT MANAGER, DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND THAT HE SHOULD BE INCLUDED IN THE BARGAINING UNIT.

12926-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. RUBBERMAID (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: ROBERT WHITE AND BRUCE LEE FOR THE APPLICANT; W. K. WINKLER, D. G. SINCLAIR AND ERIC W. CAMPBELL FOR THE RESPONDENT; P. J. BRUNNER AND PATRICK BROWN FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER  
J. O'KEEFFE: JULY 27, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THERE WAS FILED A SERIES OF DOCUMENTS IN OPPOSITION TO THE APPLICATION CONTAINING SIGNATURES OF EMPLOYEES OF THE RESPONDENT.

2. THE HISTORY OF THE ORIGATION OF THE DOCUMENTS AND THE MANNER IN WHICH THEY CAME TO BE SIGNED MAY BE BRIEFLY STATED AS FOLLOWS. MR. COY, WHO WAS A WORKING SUPERVISOR OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT, VISITED MR. SINCLAIR, THE PRESIDENT OF THE RESPONDENT, IN HIS OFFICE AND ASKED HIM ABOUT OPPOSING THE UNION. MR. SINCLAIR ADVISED MR. COY THAT HE COULDN'T TELL HIM ANYTHING ABOUT IT BUT REFERRED HIM TO A LAWYER WHO WAS EXPERIENCED IN LABOUR MATTERS AND TOGETHER WITH MR. COY LOOKED UP HIS NAME IN THE TELEPHONE DIRECTORY. MR. COY TESTIFIED THAT APART FROM GIVING HIM THE NAME OF THE LAWYER, WHICH THE OBJECTORS SUBSEQUENTLY RETAINED, NO OTHER ASSISTANCE WAS OBTAINED FROM MR. SINCLAIR.

3. AS MR. COY WAS LEAVING MR. SINCLAIR'S OFFICE HE APPROACHED MR. CHITTICK, AN EMPLOYEE OF THE RESPONDENT, WHOSE DESK WAS LOCATED ADJACENT TO MR. SINCLAIR'S OFFICE. MR. COY ASKED MR. CHITTICK IF HE WAS INTERESTED IN TAKING ACTION TO SHOW OBJECTION TO THE APPLICANT UNION. MR. COY ADVISED MR. CHITTICK THAT MR. SINCLAIR HAD REFERRED HIM TO A LAWYER. WHEN MR. CHITTICK EXPRESSED INTEREST IN OPPOSING THE UNION MR. COY TELEPHONED THE LAWYER AND ARRANGED FOR MR. CHITTICK TO ATTEND AT HIS OFFICE IN ORDER TO INSTRUCT HIM.

4. MR. CHITTICK ATTENDED AT THE LAWYER'S OFFICE AND THE PETITIONS IN OPPOSITION TO THE APPLICANT UNION WERE PREPARED.

5. THE PARTIES AGREED THAT THE LAWYER RETAINED BY THE OBJECTORS HAD NEVER ACTED ON BEHALF OF THE RESPONDENT AND WAS IN NO WAY CONNECTED WITH THE RESPONDENT.

6. THE VAST MAJORITY OF SIGNATURES WERE OBTAINED BY EMPLOYEES ON THE ROAD NEAR THE ENTRANCE TO THE RESPONDENT'S PLANT APPROXIMATELY SIXTY FEET FROM, AND IN FULL VIEW OF, THE COMPANY OFFICES. THE MAJORITY OF SIGNATURES WERE OBTAINED BY EMPLOYEES DURING A TIME WHEN THEY WERE SCHEDULED TO BE AT WORK BUT WHO HAD EITHER PUNCHED OUT EARLY OR WHO PUNCHED THEIR TIME CARDS LATE IN ORDER TO BE ABLE TO SOLICIT SIGNATURES FROM EMPLOYEES COMING ON TO THE NEXT SHIFT OR TO CATCH EMPLOYEES COMING OFF THE PRECEDING SHIFT.

7. WHILE THE SIGNATURES WERE BEING OBTAINED OUTSIDE THE PLANT DURING THE NORMAL WORKING HOURS OF THE PERSONS ACTIVELY ENGAGED IN OBTAINING THE SIGNATURES, AT LEAST ONE OF THE RESPONDENT'S FOREMEN WAS SEEN ENTERING THE PLANT AND THERE WAS NOTHING TO PREVENT OTHER MEMBERS OF MANAGEMENT FROM OBSERVING WHAT WAS HAPPENING IN FRONT OF THE COMPANY OFFICES. THE EMPLOYEES WHO LEFT WORK EARLY OR WERE LATE IN REPORTING ON THEIR SHIFT, BECAUSE OF THEIR ACTIVITY DESCRIBED ABOVE, ADVISED THEIR IMMEDIATE SUPERVISORS OF THE FACT THAT THEY WOULD BE LEAVING EARLY OR REPORTING LATE AS THE CASE MAY BE. THESE EMPLOYEES LOST UP TO ONE AND ONE HALF HOURS WORK WHILE THEY WERE ENGAGED IN THIS ACTIVITY; HOWEVER, THEY WERE NOT PAID FOR THIS TIME. ONE OF THE EMPLOYEES ENGAGED IN THE SOLICITATION MADE HIS ARRANGEMENTS TO REPORT LATE WITH MR. BROWN, HIS WORKING SUPERVISOR. WHILE MR. BROWN EXERCISES CERTAIN SUPERVISORY FUNCTIONS, THE BOARD IN ITS DECISION OF JUNE 6TH, 1967 IN THIS MATTER DETERMINED THAT HE AND THE OTHER WORKING SUPERVISORS DID NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND WERE THEREFORE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

8. THE APPLICANT'S ARGUMENT AGAINST THE ACCEPTANCE OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION, AS EVIDENCE WHICH DISCREDITED THE APPLICANT'S MEMBERSHIP EVIDENCE, WAS TWOFOLD. THE APPLICANT'S FIRST ARGUMENT WAS THAT FOLLOWING THE PRINCIPLE ENUNCIATED BY THE BOARD IN THE LINK MANUFACTURING CASE, (1954) CITED IN FOOTNOTE TO KAYSON RUBBER CASE, (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, '55-'59, ¶16,128, C.L.S. 76-627, NO WEIGHT SHOULD BE GIVEN TO THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION BECAUSE OF THE FACT THAT THEY WERE ORIGINATED BY AND CIRCULATED IN PART BY WORKING SUPERVISORS WHO EXERCISE SUPERVISORY FUNCTIONS WHICH WOULD CAUSE EMPLOYEES TO BELIEVE THAT THEY WERE MEMBERS OF MANAGEMENT. THE APPLICANT RELIED UPON THE FACT THAT ONE OF THE EMPLOYEES WHO CIRCULATED THE DOCUMENTS OBTAINED PERMISSION TO REPORT LATE FROM MR. BROWN, A WORKING SUPERVISOR, AND THAT IN SO DOING, HE INDICATED THAT HE RECOGNIZED MR. BROWN AS EXERCISING MANAGERIAL AUTHORITY. THE APPLICANT POINTED OUT THAT IT WAS REASONABLE FOR THE EMPLOYEE TO BELIEVE MR. BROWN TO BE A MEMBER OF MANAGEMENT BECAUSE OF THE EXTENT OF THE SUPERVISORY FUNCTIONS EXERCISED BY WORKING SUPERVISORS, WHICH FUNCTIONS WERE SET OUT IN THE REPORT OF THE EXAMINER IN THIS MATTER.

9. THE APPLICANT FURTHER ARGUED THAT THE ASSISTANCE GIVEN BY MR. SINCLAIR TO MR. COY AT THE TIME THE PETITIONS WERE ORIGINATED AND THE MANNER IN WHICH THE PETITIONS WERE OPENLY CIRCULATED WOULD PREVENT THE EMPLOYEES FROM EXERCISING THEIR FREE WILL WITH RESPECT TO SIGNING THE DOCUMENTS.

10. IT WAS THE RESPONDENT'S POSITION THAT NOTHING WAS DONE BY ANY MEMBER OF MANAGEMENT WHICH COULD BE CONSTRUED AS UNDUE INFLUENCE AND IT WAS NOT INCUMBENT UPON MANAGEMENT TO STOP OPPOSITION TO THE APPLICATION EVEN IF IT WERE ASSUMED THAT THEY HAD KNOWLEDGE OF SUCH OPPOSITION.

11. IN DEALING WITH A CASE OF THIS NATURE, THE BOARD IS NOT PRIMARILY CONCERNED WITH WHETHER OR NOT MANAGEMENT ENGAGED IN ANY UNFAIR LABOUR PRACTICE. INDEED, THE UNION DID NOT ALLEGE THAT MANAGEMENT ENGAGED IN AN UNFAIR LABOUR PRACTICE. THE QUESTIONS THAT THE BOARD MUST CONSIDER BEFORE GIVING EFFECT TO A DOCUMENT FILED IN OPPOSITION TO AN APPLICATION IS WHETHER THE EMPLOYEES WHO WERE INVOLVED IN THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS DID SO OF THEIR OWN VOLITION AND ALSO WHETHER THE EMPLOYEES WHO SIGNED THE DOCUMENTS HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY DID NOT WISH TO BE REPRESENTED BY THE APPLICANT UNION. IN MAKING THESE DETERMINATIONS, THE BOARD MUST TAKE INTO CONSIDERATION ALL OF THE EVIDENCE, ESPECIALLY THE OBJECTIVE FACTS, AND DETERMINE WHETHER OR NOT IT IS LIKELY THAT THE DOCUMENT SIGNIFIES THE VOLUNTARY WISHES OF THE EMPLOYEES.

12. WE ARE OF THE VIEW THAT THE ADVICE GIVEN TO MR. COY BY MR. SINCLAIR CANNOT BE CONSTRUED IN ANY OTHER WAY BUT ASSISTANCE IN OPPOSING THE APPLICATION. HAVING REGARD TO THE MANNER IN WHICH MR. COY RELATED MR. SINCLAIR'S ASSISTANCE TO MR. CHITTICK, WE FIND THAT MR. CHITTICK WOULD LIKELY BE INFLUENCED BY THE FACT THAT MR. SINCLAIR RENDERED THIS ASSISTANCE. WE ALSO FIND THAT MANAGEMENT MUST HAVE BEEN AWARE OF THE REASON THAT SO MANY EMPLOYEES ABSENTED THEMSELVES DURING WORKING HOURS WHILE THE PETITIONS WERE BEING SIGNED.



13. IN ADDITION, WHERE EMPLOYEES ARE REQUESTED TO SIGN A DOCUMENT IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION IN FULL VIEW OF PERSONS IN THE OFFICES OF THE COMPANY AND THEY ARE REQUESTED TO SIGN BY PERSONS WHO ARE SCHEDULED TO BE AT WORK, WE FIND THAT THE OPEN AND FREE MANNER IN WHICH THE EMPLOYEES ENGAGED IN THEIR ACTIVITY IN OPPOSING THE UNION IN THE CIRCUMSTANCES DESCRIBED ABOVE WOULD LIKELY BE CONSTRUED BY EMPLOYEES AS HAVING THE APPROVAL, SUPPORT AND ENCOURAGEMENT OF MANAGEMENT. THE CONSTRUCTION WHICH THE EMPLOYEES WOULD LIKELY PLACE ON THE ACTIVITIES OF THE PERSONS CIRCULATING THE PETITIONS WOULD TEND TO DEPRIVE THE EMPLOYEES OF THEIR FREEDOM OF CHOICE ESPECIALLY WHEN THEY WERE REQUESTED TO SIGN THE PETITIONS IN A PLACE WHERE AND DURING A TIME WHEN THEIR REFUSAL TO SIGN COULD BE SEEN AND NOTED BY MEMBERS OF MANAGEMENT. IN MAKING THIS FINDING WE DO NOT FIND THAT MANAGEMENT KEPT WATCH OVER THE MANNER IN WHICH THE PETITIONS WERE SIGNED. THERE WAS NO EVIDENCE TO SUGGEST THAT MANAGEMENT EITHER DID OR DID NOT KEEP WATCH. THE OBJECTIVE FACTS OF THIS CASE INDICATE THAT MANAGEMENT COULD HAVE VIEWED WHAT WAS HAPPENING AND WE HAVE ENDEAVOURED TO ASSESS WHAT EFFECT SUCH CIRCUMSTANCES WOULD LIKELY HAVE HAD ON THE EMPLOYEES.

14. WHILE WE AGREE IT IS NOT INCUMBENT UPON MANAGEMENT TO INTERFERE WITH EMPLOYEES WHO ARE OPPOSING THE UNION, IT WOULD BE TRITE TO SAY THAT IT IS UNLIKELY THAT MANAGEMENT WOULD PERMIT EMPLOYEES TO LEAVE WORK EARLY AND REPORT TO WORK LATE IN THE SAME MANNER AS WAS DONE IN THIS CASE FOR THE PURPOSE OF SOLICITING UNION MEMBERSHIP.

15. IN VIEW OF THE CIRCUMSTANCES WHICH LED TO THE ORIGATION AND THE CIRCUMSTANCES SURROUNDING THE CIRCULATION OF THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, WE ARE NOT PREPARED TO HOLD THAT THE DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

16. IN VIEW OF OUR FINDING, IT IS UNNECESSARY FOR THE BOARD TO DEAL WITH THE APPLICANT'S ARGUMENT CONCERNING THE PRINCIPLE REFERRED TO IN THE LINK MANUFACTURING CASE, APART FROM COMMENTING THAT THE EVIDENCE IN SUPPORT OF THAT ARGUMENT COULD NOT BE DESCRIBED AS CONCLUSIVE.

17. WE ARE THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 10TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES INCLUDED IN THE BARGAINING UNIT DESCRIBED BY THE BOARD IN ITS DECISION OF JUNE 6TH, 1967, IN THIS MATTER.

I DISSENT. I WOULD NOT HAVE GRANTED CERTIFICATION AT THIS TIME BUT WOULD HAVE ORDERED A REPRESENTATION VOTE IN ORDER THAT THE EMPLOYEES COULD INDICATE THEIR TRUE WISHES BY SECRET BALLOT. THE EMPLOYEES WOULD HAVE BEEN ASKED IF THEY WISHED TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH THE APPLICANT UNION.

AT THE HEARING OF THE APPLICATION FOR CERTIFICATION, THE BOARD INQUIRED INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF A NUMBER OF DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION AND CONTAINING THE SIGNATURES OF EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT.

COUNSEL FOR THE OBJECTORS CALLED A GREAT NUMBER OF EMPLOYEES WHO VERIFIED MOST OF THE SIGNATURES ON THE DOCUMENTS. DURING THE PERIOD OF APPROXIMATELY ONE DAY THAT THESE VARIOUS WITNESSES GAVE TESTIMONY, THERE WAS AN ALMOST COMPLETE LACK OF ANY CONFLICT IN THEIR RESPECTIVE TESTIMONY. THE FACTS NOT BEING IN DISPUTE, THEREFORE, IT IS FOR THIS BOARD TO DETERMINE WHETHER THE SIGNATORIES TO THE DOCUMENTS IN OPPOSITION WERE VOLUNTARILY EXPRESSING THEIR TRUE WISHES.

THE EVIDENCE OF ARTHUR COY, (AN "EMPLOYEE" SO FOUND BY THIS BOARD,) IS THAT ON HIS OWN INITIATIVE HE ATTENDED AT THE OFFICE OF MR. SINCLAIR, ASKING HIM THE NAME OF A LAWYER. HE STATED THAT HIS QUARE WAS FOR PERSONAL REASONS BUT THAT IT CONCERNED THE CERTIFICATION APPLICATION. THE TWO MEN THEN CONSULTED THE TELEPHONE BOOK AND OBTAINED THE NAME OF A LEGAL FIRM. THE EVIDENCE IS THAT NOTHING ELSE WAS SAID CONCERNING UNION MATTERS.

SUBSEQUENTLY, COY APPROACHED ONE GARFIELD CHITTICK WHOSE VIEWS WERE SIMILAR TO THOSE OF COY CONCERNING THE BRINGING IN OF A UNION. COY ASKED CHITTICK IF HE WERE INTERESTED IN STARTING ACTION TO SHOW OBJECTION TO THE UNION. HE MENTIONED THAT HE HAD OBTAINED THE NAME OF A LAWYER AND THAT MR. SINCLAIR HAD HELPED HIM TO GO THROUGH THE TELEPHONE BOOK TO OBTAIN SUCH NAME.

BETWEEN MR. COY AND MR. CHITTICK THE LAWYER WAS CONTACTED AND HE PREPARED THE PETITIONS IN OPPOSITION TO THE APPLICANT UNION. THE TWO OF THEM THEN OBTAINED THE SERVICES OF A NUMBER OF OTHER EMPLOYEES TO ASSIST IN OBTAINING SIGNATURES ON THE VARIOUS PETITIONS.

THE MAJORITY OF SIGNATURES WERE OBTAINED ON THE ROAD OFF COMPANY PREMISES. WHILE THE COMPANY OFFICES FACE THE ROAD, THERE IS SOME CONFLICT AS TO HOW FAR FROM THE OFFICES THE SIGNATURES WERE OBTAINED. THE EVIDENCE OF COY IS THAT THE MAJORITY OF SIGNATURES WERE SIGNED ON THE ROAD A GREAT DISTANCE FROM THE OFFICES AND THAT PERSONS COULD NOT BE DISTINGUISHED FROM THE OFFICES. IN ANY EVENT THERE IS ABSOLUTELY NO EVIDENCE WHERE THE INDIVIDUAL OFFICES OF THE MEMBERS OF MANAGEMENT ARE LOCATED WITH RELATION TO WHERE SIGNATURES WERE OBTAINED.

THE REPRESENTATIVE FOR THE UNION, IN HIS ARGUMENT, REFERRED TO THE FACT THAT CERTAIN OF THE EMPLOYEES WHO OBTAINED SIGNATURES WERE GRANTED TIME OFF WORK, AND THAT THIS CONSTITUTED MANAGEMENT SUPPORT FOR THE PETITIONS. THIS, HOWEVER, IS, IN MY OPINION, NOT SO. NONE OF THE EMPLOYEES WERE PAID FOR ANY TIME WHICH THEY LOST FROM THEIR EMPLOYMENT,

AND EACH OF THE EMPLOYEES OBTAINED THE TIME FROM WORK IN ACCORDANCE WITH PREVIOUSLY ESTABLISHED PROCEDURES FOR ABSENTING THEMSELVES. FOR THE COMPANY TO REFUSE PERSONS TIME FROM WORK WOULD BE A DENIAL OF HITHERTO ESTABLISHED RIGHTS OBTAINED BEFORE THE ARRIVAL OF THE UNION ON THE SCENE.

THERE IS NOT ONE IOTA OF EVIDENCE THAT THE COMPANY KNEW THE REASON FOR WHICH THE EMPLOYEES ABSENTED THEMSELVES WHEN THEY ASKED FOR PERMISSION TO BE ABSENT FROM WORK FOR SHORT PERIODS OF TIME. EACH INDICATED THAT IT WAS FOR PERSONAL REASONS THAT THEY MIGHT RESPECTIVELY BE LATE. HOWEVER, EVEN IF MANAGEMENT HAD SUSPECTED THE REASON WHY EMPLOYEES WERE ABSENTING THEMSELVES, WHAT WAS IT TO DO? WAS IT TO DENY A PROCEDURE WHICH WAS ROUTINE IN THE PLANT IN THE FEAR THAT THIS BOARD MIGHT CONSTRUE ITS REGULAR PROCEDURE AS BEING MANAGEMENT INTERFERENCE IN THE PETITION?

THE UNION ARGUED THAT BECAUSE A FOREMAN WAS SEEN WHILE SIGNATURES WERE BEING OBTAINED, THIS INDICATED KNOWLEDGE OF MANAGEMENT AND ENCOURAGEMENT AND SUPPORT THEREFROM. IN ALL COMMON SENSE, HOWEVER, WHAT WERE THE PERSONS OBTAINING SIGNATURES TO DO WHEN THE FOREMAN APPROACHED? WERE THEY TO HIDE? IS IT SUGGESTED THAT MANAGEMENT WAS TO TAKE DISCIPLINARY ACTION AGAINST THE EMPLOYEES FOR OBTAINING SIGNATURES? SURELY THE CONVERSE OF THESE PREMISES IS NOT THAT MANAGEMENT ASSISTED IN THE PETITION TO THE EXTENT THAT THE EMPLOYEES WOULD NOT EXPRESS THEIR VOLUNTARY WISHES.

THE LAST ARGUMENT MADE BY THE APPLICANT IS THAT THE FACTS OF THIS CASE SHOULD FALL WITHIN THE PRINCIPLE ENUNCIATED BY THE BOARD IN LINK MANUFACTURING CASE, (1954) CITED IN THE FOOTNOTE TO KAYSON RUBBER CASE (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, '55-'59, ¶16,128, C.L.S. 76-627 AND THAT BECAUSE PERSONS EMPLOYED IN THE POSITION OF WORKING SUPERVISOR ENGAGED IN THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITIONS, NO WEIGHT BE GIVEN TO THE PETITION. THE BOARD HAD EARLIER FOUND THAT WORKING SUPERVISORS DID NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

IN THE LINK MANUFACTURING CASE, THE BOARD REFUSED TO HOLD THAT THE SIGNATURES OBTAINED ON A PETITION WEAKENED THE MEMBERSHIP EVIDENCE WHEN THE PERSON CIRCULATING THE DOCUMENT IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION, "EXERCISED IN THE PLANT A DEGREE OF AUTHORITY WHICH COULD AND DID REASONABLY INDUCE EMPLOYEES TO BELIEVE THAT HE WAS A FOREMAN AND POSSESSED POWER TO AFFECT THEIR EMPLOYMENT STATUS". IN CITING THIS PRINCIPLE I MAKE NO PERSONAL COMMENTS ON MY AGREEMENT THEREWITH. MY COLLEAGUES DO NOT BASE THEIR DECISION ON THE ARGUMENT CONCERNING THE PRINCIPLE CONTAINED IN THIS CASE. THERE MERELY COMMENT THAT THE EVIDENCE IN SUPPORT OF THAT ARGUMENT "COULD NOT BE DESCRIBED AS CONCLUSIVE." I WOULD FIND, HOWEVER, THAT NOT ONLY IS THE EVIDENCE NOT CONCLUSIVE; IT IS NON-EXISTENT.

IN SUMMARY THEREFORE, MAY I SAY THAT THERE IS NO EVIDENCE FROM WHICH TO CONCLUDE THAT SIGNATORIES TO THE PETITIONS WERE NOT DOING SO OF THEIR OWN VOLITION. I WOULD FIND THAT THERE HAS BEEN NO INTERFERENCE BY MANAGEMENT EITHER DIRECTLY OR INDIRECTLY. I WOULD ALLOW THE PETITIONS TO STAND AND WOULD DIRECT THAT A VOTE BE HELD.

13014-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V.  
LAKEVIEW SALVAGE & WRECKING COMPANY (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. KOSKIE FOR THE APPLICANT, AND  
J. F. H. GRAY AND W. WASYLYK FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 5, 1967.

3. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. REFERENCE IS MADE TO GREENSPOON BROS. LIMITED, APRIL, 1967, BOARD FILE NO 2888-66.

BOARD NOTES THE AGREEMENT OF THE PARTIES THAT, (1) PAUL ICNEIL'S NAME SHOULD BE REMOVED FROM THE LIST OF EMPLOYEES FILED BY THE RESPONDENT ON THE GROUND THAT HE WAS A FULL TIME YARD MAN, (2) A. LEBLANC'S NAME SHOULD ALSO BE REMOVED FROM THE LIST FOR PURPOSES OF THE COUNT BECAUSE HE WAS NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION, AND (3) F. COLAVECCHIA'S NAME SHOULD BE ADDED TO THE LIST ON THE GROUND THAT HE WAS AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION.

ON THE BASIS OF THE EVIDENCE AS CONTAINED IN THE EXAMINER'S REPORT DATED MAY 18, 1967, TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES THEREON, THE BOARD FINDS THAT FRANK BONNEVILLE, ARCHIE COSBURN, EGNATZ MOSBAUER AND GIONVANNI CATENA ARE NOT EMPLOYEES INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. AFTER CAREFULLY CONSIDERING THE MATTER, IT IS THE BOARD'S VIEW THAT THE PRINCIPLE (APPLIED IN CONSTRUCTION INDUSTRY CASES) THAT A PERSON NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT IS EQUALLY APPLICABLE TO PERSONS WHO, THOUGH AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION, ARE ENGAGED IN AN OPERATION WHICH DOES NOT FALL UNDER THE DEFINITION OF CONSTRUCTION INDUSTRY. THE FOUR PERSONS REFERRED TO ABOVE WERE EMPLOYED AT THE RESPONDENT'S YARD ON THE DATE OF THE MAKING OF THE APPLICATION AND NOT AT THE SITE OF THE RESPONDENT'S OPERATIONS AND HENCE ARE NOT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT.



5. THE BOARD FINDS FURTHER THAT GORDON DUNN IS EMPLOYED CHIEFLY AS A LABOURER AND CONSEQUENTLY IS INCLUDED IN THE BARGAINING UNIT.

6. IT IS CLEAR THAT STANLEY SZUMILUS AND WALTER WARIAS HAVE THE POWER TO HIRE AND FIRE EMPLOYEES, TO LAY THEM OFF AND TO SEND THEM HOME WHEN IT RAINS. THEY ALSO DIRECT THE WORK FORCES UNDER THEM. THESE ARE CLEARLY MANAGERIAL POWERS AND EVEN THOUGH SZUMILUS AND WARIAS WORK WITH THE MEN AND ARE THEREFORE WORKING FOREMEN, THEY CLEARLY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY FINDS FURTHER THAT SZUMILUS AND WARIAS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

7. THE LIST FILED BY THE RESPONDENT CONTAINED 39 NAMES. SEVEN OF THE NAMES APPEARED ON SCHEDULE D TO THE REPLY, AND THOSE SEVEN PERSONS WOULD NOT BE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT BECAUSE THEY WERE NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE FINDINGS SET OUT IN THE PRECEDING PARAGRAPHS, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE 25 PERSONS IN THE BARGAINING UNIT. THE APPLICANT FILED MEMBERSHIP EVIDENCE FOR 14 OF THESE 25 PERSONS.

8. IT WAS ALLEGED BY THE RESPONDENT THAT PASQUALE ASSALONI DID NOT PAY \$1.00 TOWARDS HIS INITIATION FEE, ALTHOUGH THE APPLICANT FILED A COMBINATION CARD AND RECEIPT ON BEHALF OF THE SAID ASSALONI INDICATING THAT A \$1.00 PAYMENT HAD BEEN MADE. FOLLOWING ITS USUAL PRELIMINARY INVESTIGATION, THE BOARD HELD A HEARING TO INQUIRE FURTHER INTO THE ALLEGATION. AT THAT HEARING MR. ASSALONI AND THE PERSON SHOWN AS COLLECTOR OF THE MONEY, A TEMPORARY UNION BUSINESS AGENT, ONE CLAIRE CALHOUN, GAVE EVIDENCE. MR. ASSALONI MAINTAINED THAT HE DID NOT PAY \$1.00 TO THE UNION REPRESENTATIVE AND MR. CALHOUN WAS EQUALLY FIRM THAT HE RECEIVED \$1.00 FROM MR. ASSALONI. WE HAVE GIVEN CAREFUL CONSIDERATION TO THE EVIDENCE OF THESE TWO PERSONS AND TO THE ABLE ARGUMENTS OF COUNSEL. MR. CALHOUN GAVE HIS EVIDENCE IN A STRAIGHTFORWARD AND BELIEVABLE MANNER. WE WERE IMPRESSED WITH HIS DEMEANOUR IN THE WITNESS BOX. CONTRARY TO WHAT WAS ARGUED BY COUNSEL FOR THE RESPONDENT, CALHOUN NOT ONLY RELIED ON HIS PRACTICE OF NOT ISSUING A RECEIPT WITHOUT GETTING \$1.00 IN RETURN, BUT TESTIFIED DIRECTLY THAT HE DID RECEIVE THE \$1.00 FROM ASSALONI. MUCH OF MR. ASSALONI'S EVIDENCE WAS CONFUSING AND CONTRADICTORY. HIS MEMORY WAS CERTAINLY NOT OF THE BEST. IN THESE CIRCUMSTANCES WE ACCEPT THE EVIDENCE OF CALHOUN AND FIND THAT ASSALONI DID PAY \$1.00 TO MR. CALHOUN.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13070-67-R: LOCAL UNION No. 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC-OFL (APPLICANT) V. ELECTRO-VOX INC. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: JULY 25, 1967.

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2. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER, DATED JULY 6TH, 1967, IN THIS MATTER.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT JOB SUPERVISOR, PERSONS ABOVE THE RANK OF JOB SUPERVISOR, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT MICHAEL HUBBARD, JOB SUPERVISOR, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT WILLIAM WILLIAMS, STOCKKEEPER-DELIVERY MAN, DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 11TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER P. J. O'KEEFE: JULY 25, 1967.

I DISSENT WITH REGARD TO THE FINDING OF THE MAJORITY RELATING TO MICHAEL HUBBARD. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, I FIND THAT HUBBARD DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. ACCORDINGLY, I WOULD HAVE INCLUDED HIM IN THE BARGAINING UNIT.

13074-67-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. THE BREITHAUP LEATHER COMPANY LIMITED (RESPONDENT) v. BOOT AND SHOE WORKERS' UNION, AFFILIATED WITH C.L.C. A.F. OF L. C.I.O. (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: W. E. FALLS AND C. McIVOR FOR THE APPLICANT,  
R. G. MEVNIER AND D.R. DURBIN FOR THE RESPONDENT, NO ONE APPEARING  
FOR THE INTERVENER, AND ERNEST SKINKLE FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JULY 6, 1967.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT HASTINGS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIODS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD, HAVING REGARD TO THE AGREEMENT OF THE PARTIES MADE BEFORE THE EXAMINER ON JUNE 19TH, 1967, AND ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

4. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

5. THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE INTERVENER HAVING BEEN TESTED IN A REPRESENTATION VOTE HELD IN CONNECTION WITH A PREVIOUS APPLICATION FOR CERTIFICATION BY THE INTERVENER (BOARD FILE NO. 12517-66-R) CANNOT BE USED AGAIN (NORTHERN ELECTRIC COMPANY CASE, ONTARIO LABOUR RELATIONA BOARD MONTHLY REPORT, FEBRUARY 1960, P. 382).

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

13081-67-R: INTERNATIONAL CHEMICAL WORKERS' UNION (APPLICANT) v. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: DON MACDONALD FOR THE APPLICANT,  
D. F. O. HERSEY AND J. A. SHAKESPEARE FOR THE RESPONDENT, AND  
VICTOR CASSAR AND CESIDIO TRIFONE FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JULY 5, 1967.

1. MR. W. G. JACKSON, THE EXAMINER APPOINTED BY THE BOARD IN ITS ENDORSEMENT OF MAY 25TH, 1967, HAS, WITH THE AGREEMENT OF THE PARTIES, PREPARED A MEMORANDUM RELATING TO THE RESPONDENT'S OPERATIONS IN METROPOLITAN TORONTO, AND SETTING OUT THE FACTS ON WHICH THE PARTIES AGREED. THE PARTIES HAVE FURTHER AGREED THAT THE BOARD MAY DECIDE THE MATTERS IN ISSUE ON THE BASIS OF THE FACTS SET OUT IN THE EXAMINER'S MEMORANDUM, AND THAT NO REPORT OF THE EXAMINER NEED BE MADE.
2. THE RESPONDENT'S OPERATIONS IN METROPOLITAN TORONTO ARE CARRIED ON AT SOME FIVE LOCATIONS. THERE IS A HEAD OFFICE ON BAY STREET IN THE CITY OF TORONTO. THERE IS A PLANT AT MOUNT DENNIS, WHOSE OPERATIONS RELATE TO ASPHALT ROOFING AND STEEL PRODUCTS FOR BUILDING PURPOSES. THERE IS A PLANT AT WESTON DEALING WITH INSULATION MATERIALS, A PLANT AT NORTH YORK DEALING WITH CARPET UNDERLAY AND PLASTIC PIPE, AND A WAREHOUSE IN THE LAKESHORE AREA WHERE ROOFING AND PLASTIC PIPE ARE STORED.
3. THE APPLICANT NOW SEEKS CERTIFICATION FOR A UNIT OF EMPLOYEES AT THE MOUNT DENNIS PLANT. IN SITUATIONS WHERE AN EMPLOYER HAS EMPLOYEES AT MORE THAN ONE LOCATION IN A GENERAL GEOGRAPHIC AREA, THE BOARD TAKES INTO ACCOUNT A NUMBER OF FACTORS IN DETERMINING WHAT CONSTITUTES AN APPROPRIATE BARGAINING UNIT. MORE PARTICULARLY, THE BOARD CONSIDERS WHETHER THERE IS INTERCHANGE OF EMPLOYEES BETWEEN LOCATIONS, THE NUMBER OF EMPLOYEES AND THE TYPE OF OPERATION CARRIED ON IN EACH LOCATION, THE HISTORY OF THE BARGAINING UNIT IN THE PARTICULAR TYPE OF OPERATION AND THE DESIRE OF THE PARTIES. IN THE INSTANT CASE THE MATERIAL AND THE MEMORANDUM PREPARED BY THE EXAMINER INDICATES THAT AT THE MOUNT DENNIS PLANT THERE IS A SUBSTANTIAL NUMBER OF EMPLOYEES, AND THAT OPERATIONS CARRIED ON THERE ARE DISTINCT FROM THOSE CARRIED ON IN THE OTHER PLANTS OPERATED BY THE RESPONDENT IN METROPOLITAN TORONTO. WHILE EMPLOYEES AT THE MOUNT DENNIS PLANT HAVE ON OCCASION MOVED TO ANOTHER PLANT, THIS WOULD APPEAR TO BE AS THE RESULT OF THE OPPORTUNITY OFFERED THEM, IN CERTAIN CIRCUMSTANCES, TO BID FOR JOB OPENINGS IN ANOTHER PLANT. THERE APPEARS TO BE NO FUNCTIONAL INTERCHANGE BETWEEN EMPLOYEES BETWEEN THE RESPONDENT'S PLANTS. WHILE IN THE PAST CERTIFICATION HAS BEEN GRANTED WITH RESPECT TO UNITS OF EMPLOYEES AT ONE OR MORE OF THE RESPONDENT'S PLANTS, IT MUST BE NOTED THAT IN SOME CASES THESE CERTIFICATIONS RELATED TO PLANTS OPERATED BY PREDECESSOR EMPLOYERS. IN OUR VIEW, THE HISTORY OF CERTIFICATION AS IT AFFECTS THESE PLANTS IS OF NO MATERIAL SIGNIFICANCE TO THE INSTANT CASE.
4. HAVING REGARD TO THE MATERIAL SET OUT IN THE EXAMINER'S MEMORANDUM, IT IS OUR OPINION THAT A UNIT OF EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 15 OXFORD DRIVE IN METROPOLITAN TORONTO (THAT IS THE



MOUNT DENNIS PLANT) WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 15 OXFORD DRIVE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

13233-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT)  
V. GIBSON WILLOUGHBY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. A. RYDER AND A. BEKERMANN FOR THE APPLICANT,  
AND D. CHURCHILL-SMITH AND D. ORAM FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 27, 1967.

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4. THE BOARD FURTHER FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE BOILER ROOM AT THE HERBERT HOUSE, 335 BAY STREET, TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE RESPONDENT ALLEGES THAT A FORMER EMPLOYEE, I. PODA, WHO AT THE TIME WAS SUPERINTENDENT, HAD THREATENED AND COERCED EMPLOYEES INTO JOINING THE UNION, AND THAT THE APPLICANT WAS AWARE OF AND APPROVED HIS ACTIONS. THE SUPERINTENDENT WAS SUBSEQUENTLY DISCHARGED BY THE RESPONDENT.

IT WAS AGREED THAT PODA WAS SUPERINTENDENT AT THE MATERIAL TIME.

6. THE BUSINESS AGENT OF THE APPLICANT ANDRE BEKERMANN, TESTIFIED THAT ON JUNE 7TH, 1967, HE RECEIVED A TELEPHONE CALL FROM SOME PERSON WHOM, HE STATED, HE IS UNABLE TO IDENTIFY, ASKING HIM TO COME TO 335 BAY STREET AT 3:30 THAT AFTERNOON. HE WENT TO THAT ADDRESS AT THE TIME SUGGESTED AND MET WITH PODA, SARIDIS AND AN EMPLOYEE NAMED KAPOUTSIS, KAPOUTSIS SIGNED AN APPLICATION CARD AT THIS TIME, BUT SARIDIS REFUSED ON THE GROUNDS THAT HE WAS ALREADY A MEMBER OF THE UNION IN A BARGAINING UNIT IN A DIFFERENT BUILDING. THE EVIDENCE WAS THAT SARIDIS WAS TO COME ON THE STAFF AT 335 BAY STREET ON JUNE 14TH, AND IN THE MEANTIME WAS EMPLOYED ELSEWHERE. BEKERMANN TESTIFIED THAT ON JUNE 14TH AT ABOUT 3.30 P.M. HE AGAIN ATTENDED AT 335 BAY STREET. HE AGAIN MET PODA WHO WAS ACCOMPANIED BY SARIDIS. AN ARGUMENT DEVELOPED, WHICH BEKERMANN SAID GAVE HIM THE IMPRESSION THAT PODA WAS TRYING TO INSIST UPON SARIDIS JOINING THE UNION. THE ARGUMENT WAS LOUD AND HEATED AND DURING THE COURSE OF IT PODA ORDERED SARIDIS OUT OF THE OFFICE. BEKERMANN STATED THAT HE TRIED TO CALM BOTH MEN AND TOLD PODA THAT IT WAS NOT A MATTER OF LIFE OR DEATH THAT SARIDIS SHOULD BECOME A MEMBER.

7. AN EMPLOYEE, CHARLIE WALKER, WAS CALLED BY THE RESPONDENT. HE TESTIFIED THAT ON JUNE 7TH HE TALKED WITH PODA WHO RELIEVED HIM ON SHIFT THAT MORNING, AND THAT DURING THE COURSE OF THE CONVERSATION PODA TOOK A BLANK UNION APPLICATION CARD OUT OF HIS CABINET AND GAVE IT TO WALKER. WALKER STATED HE WOULD NOT SIGN THE CARD UNTIL HE TALKED WITH THE UNION ORGANIZER.

8. SARIDIS TESTIFIED THAT HAVING BEEN LAID OFF WORK AT A BUILDING AT 360 BAY STREET HE WAS ASKED TO REPORT TO 335 BAY STREET. HE REPORTED TO THE SUPERINTENDENT PODA ON JUNE 7TH, 1967. PODA INTERVIEWED SARIDIS AND DURING THE COURSE OF THE CONVERSATION IT BECAME CLEAR TO SARIDIS THAT PODA WANTED HIM TO JOIN THE UNION. ON JUNE 14TH, THE DAY UPON WHICH HE WAS TO REPORT FOR WORK, HE MET WITH PODA AND BEKERMANN AT PODA'S OFFICE. HE TESTIFIED THAT PODA AND BEKERMANN TRIED TO GET HIM TO SIGN A UNION CARD. HE REFUSED, WHEREUPON THE ALTERCATION REFERRED TO IN BEKERMANN'S EVIDENCE TOOK PLACE.

9. THE EVIDENCE CLEARLY INDICATES THAT PODA TOOK AN AGGRESSIVELY ACTIVE PART IN THE ORGANIZATIONAL CAMPAIGN OF THE APPLICANT AND GAVE SUPPORT TO BEKERMANN IN HIS EFFORTS. HE IS, AS NOTED ABOVE, ACKNOWLEDGED TO HAVE BEEN A MEMBER OF MANAGEMENT AT THE TIME. THESE FINDINGS BRING US FACE TO FACE WITH THE PROVISIONS OF SECTION 10 OF THE LABOUR RELATIONS ACT. THE SECTION READS AS FOLLOWS:-

THE BOARD SHALL NOT CERTIFY A TRADE UNION  
IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS  
PARTICIPATED IN ITS FORMATION OR ADMINISTRATION  
OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO  
IT OR IF IT DISCRIMINATES AGAINST ANY PERSON  
BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY,  
ANCESTRY OR PLACE OF ORIGIN.

10. THE SECTION APPEARS TO BE A BALD PROHIBITION OF THE CERTIFICATION BY THE BOARD OF A TRADE UNION WHERE THE EMPLOYER HAS DONE ANY OF THESE THINGS SET OUT IN THE SECTION. IN OUR OPINION, HOWEVER, THE SECTION CANNOT BE TAKEN TO MEAN THAT IN EVERY CASE THE LEGITIMATE EFFORTS OF A TRADE UNION TO ORGANIZE EMPLOYEES AND OBTAIN CERTIFICATION AS THEIR BARGAINING AGENT CAN BE FRUSTRATED BY INTERFERENCE ON THE PART OF THE EMPLOYER CONCERNED. TO READ THE SECTION OTHERWISE WOULD BE TO ENABLE ANY EMPLOYER TO USE, OR RATHER ABUSE, THE PROVISIONS OF SECTION 10 TO DELIBERATELY FRUSTRATE THE ORGANIZATION OF THE EMPLOYEES BY A UNION - CONTRARY TO THE WHOLE PURPOSE OF THE LEGISLATION. SUPPORT OF THIS VIEW IS TO BE FOUND IN THE AIR LIQUIDE CASE, 1964 C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,002, AND THE DEACON BROTHERS LTD. CASE, 46 C.L.L.C. ¶16,412.

11. PODA WAS NOT CALLED AS A WITNESS, BUT THE WHOLE COURSE OF HIS CONDUCT, AS RELATED BY THE WITNESSES WHO WERE CALLED, INCLUDING BEKERMAN, INDICATES THAT HE WAS PROMOTING THE MEMBERSHIP CAMPAIGN FOR REASONS BEST KNOWN TO HIMSELF. BEKERMAN TESTIFIED HE HAD HAD NO PREVIOUS ACQUAINTANCE-SHIP WITH HIM. THERE IS THE PECULIAR CIRCUMSTANCE, HOWEVER, THAT PODA HAD A BLANK UNION CARD IN HIS CABINET WHICH HE PRESENTED TO THE WITNESS WALKER ON JUNE 7TH, PRIOR TO BEKERMAN'S FIRST APPEARANCE ON THE SCENE THAT SAME DAY. WHEN BEKERMAN DID APPEAR, PODA WAS THERE. WHEN BEKERMAN APPEARED ON JUNE 14TH, PODA WAS THERE. WHEN THE ARGUMENT BETWEEN PODA AND SARIDIS BECAME VEHEMENT TO THE POINT OF VIOLENCE BEKERMAN TESTIFIED THAT HE TOLD PODA, NOT THAT HE DID NOT WANT OR NEED HIS HELP, BUT THAT IT WAS NOT A LIFE OR DEATH MATTER WHETHER SARIDIS JOINED OR NOT, INDICATING THAT HE SHOULD NOT PERSIST IN ATTEMPTING TO HAVE SARIDIS SIGN.

12. IN THE LIGHT OF ALL THE EVIDENCE, WE FIND THAT BEKERMAN AND PODA WORKED HAND IN GLOVE THROUGHOUT THIS WHOLE MATTER. IN OUR OPINION, BEKERMAN DID NOT MERELY FAIL TO REPUDIATE THE COERCIVE ACTIVITIES OF PODA, BUT BY HIS CONDUCT INVITED AND CONDONED IT. WE FIND THAT THE CIRCUMSTANCES ARE SUCH THAT, HAVING REGARD TO THE PROVISIONS OF SECTION 10 OF THE ACT, THE APPLICANT CANNOT BE CERTIFIED. THE APPLICATION IS ACCORDINGLY DISMISSED.

13235-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC:  
(APPLICANT) v. KRAFT FOODS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES  
(OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: H. BUCHANAN FOR THE APPLICANT, W. M. TEMPLE  
AND J. K. MULCAIR FOR THE RESPONDENT, AND ROGER SALHANY FOR A GROUP  
OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE: JULY 12, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WILLIAMSTOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD HEARD EVIDENCE WITH RESPECT TO THE ORIGINATION OF AND THE MANNER IN WHICH SIGNATURES WERE OBTAINED TO DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION. THE BOARD FINDS THAT THE DOCUMENTS SUFFICIENTLY WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

5. OF THE DOCUMENTS REFERRED TO ABOVE TEN WERE NOTICES OF RESIGNATION FROM THE UNION BY EMPLOYEES IN THE BARGAINING UNIT. WITH RESPECT TO THE EFFECT TO BE GIVEN TO THESE DOCUMENTS AND HAVING IN MIND THE REPRESENTATIONS OF COUNSEL FOR THE OBJECTORS TO THE EFFECT THAT THEY CANCEL THE MEMBERSHIP EVIDENCE, WE WOULD SET OUT THE FOLLOWING QUOTATION FROM AN UNREPORTED CASE INVOLVING CALDWELL LINEN MILLS LIMITED, BOARD FILE No. 12537-66-R, WITH WHICH WE RESPECTFULLY AGREE:

- - - THE STATEMENT OF DESIRE BY EMPLOYEES OR THE OBJECTION BY EMPLOYEES TO CERTIFICATION TAKES MANY FORMS, THE MOST COMMON OF WHICH USUALLY READS "WE THE UNDERSIGNED EMPLOYEES DO NOT WISH TO BE REPRESENTED BY THE (NAME) TRADE UNION". HOWEVER, IT IS NOT UNCOMMON FOR EMPLOYEES TO USE A FORM OF OBJECTION TO AN APPLICATION FOR CERTIFICATION WHEREIN THEY INDICATE THEY REVOKE THE MEMBERSHIP CARD WHICH THEY HAD SIGNED. WHATEVER THE ACTUAL WORDING USED BY EMPLOYEES, GENERALLY SPEAKING, THE EFFECT IS THE SAME. STATED SIMPLY THE EMPLOYEES DO NOT INTEND THAT THEIR MEMBERSHIP CARD BE USED FOR THE PURPOSE OF PERMITTING THE BOARD TO CERTIFY AN APPLICANT TRADE UNION. WHATEVER FORM THE STATEMENT OF OBJECTIONS TAKES ON AN APPLICATION FOR CERTIFICATION, SO LONG AS THE STATEMENT VOICES OBJECTION TO THE APPLICATION, THE BOARD, IF SATISFIED WITH THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES WERE OBTAINED, TREATS ALL STATEMENTS OF OBJECTION IN THE SAME MANNER WITHOUT REGARD TO THE SPECIFIC WORDS USED. WHERE THERE IS A STATEMENT OF OBJECTIONS FILED, THE BOARD DOES NOT TREAT THE STATEMENT OF OBJECTIONS AS "CANCELLING OUT" THE MEMBERSHIP EVIDENCE. THE BOARD CONTINUES TO BE "SATISFIED" WITH THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AND ACCORDINGLY IS SATISFIED THAT THE EMPLOYEES WERE MEMBERS OF THE APPLICANT UNION. HOWEVER, SINCE THE STATEMENT OF



OBJECTIONS HAS CHALLENGED THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT THIS CHALLENGE MUST BE RESOLVED BY THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. IT OFTEN HAPPENS THAT THE STATEMENT OF OBJECTIONS FILED BY EMPLOYEES HAS BEEN SIGNED BY EACH AND EVERY PERSON FOR WHOM AN APPLICANT UNION HAS FILED MEMBERSHIP EVIDENCE. IN SUCH A CIRCUMSTANCE, IT HAS NEVER BEEN THE BOARD'S PRACTICE, NO MATTER WHAT WORDING APPEARS ON THE STATEMENT OF OBJECTION, TO TREAT THE STATEMENT OF OBJECTIONS AS CANCELLING OUT THE MEMBERSHIP EVIDENCE FILED BY AN APPLICANT. THE BOARD RESOLVES THE CHALLENGE TO THE APPLICANT'S EVIDENCE BY REQUIRING THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. - - -

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 19TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

JULY 27, 1967.

I DISSENT. THE BOARD IN THIS CASE HAS USED THE 19TH DAY OF JUNE 1967, AS ITS DATE FOR DETERMINING MEMBERSHIP. PRIOR TO THIS TERMINAL DATE, THE SOLICITOR FOR A GROUP OF EMPLOYEES IN THE UNIT FORWARDED TO THE APPLICANT TEN RESIGNATIONS FROM THE APPLICANT UNION, SIGNED BY TEN MEMBERS OF THE BARGAINING UNIT. THESE RESIGNATIONS, IF THEY ARE TAKEN AT FACE VALUE, WOULD LOWER THE UNION MEMBERSHIP TO BELOW THE FORTY-FIVE PER CENT WHICH IS NECESSARY FOR THE UNION TO HAVE, BEFORE THE BOARD CAN DIRECT A VOTE UNDER SECTION 7(2) OF THE LABOUR RELATIONS ACT.

IN VIEW OF THE SPECIFIC WORDING OF SECTION 7 (2) AND FOR REASONING SIMILAR TO THAT CONTAINED IN MY DISSENT IN CALDWELL LINEN MILLS LIMITED, BOARD FILE NO. 12537-66-R, I AM COMPELLED TO FIND THAT I AM NOT SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION.

ACCORDINGLY, I WOULD DISMISS THE APPLICATION.

13263-67-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS  
(CANADA) (APPLICANT) v. SURLUGA GOLD MINES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: WILLIAM KENNEDY FOR THE APPLICANT,  
B. M. W. PAULIN, C. A. MCLEISH AND W. D. SUTHERLAND FOR THE  
RESPONDENT.

DECISION OF THE BOARD: JULY 13, 1967.

1. THE APPLICANT APPLIED ON JUNE 14TH, 1967 TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT ITS MINING OPERATIONS IN MICHIPICOTIN TOWNSHIP WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

2. THE EVIDENCE ADDUCED AT THE HEARING ESTABLISHED THAT ON OR ABOUT MAY 24TH, 1967, THE RESPONDENT TOOK OVER THE OPERATION OF ITS MINE FROM A CONTRACTOR WHO HAD PREPARED THE MINE FOR OPERATION. WHILE ON THE DATE OF MAKING THE APPLICATION THERE WERE TWENTY-NINE EMPLOYEES IN THE PROPOSED BARGAINING UNIT, THE RESPONDENT ANTICIPATED THAT AFTER A MILL HAD BEEN CONSTRUCTED ON THE PROPERTY DURING THE FALL OF 1967 A BUILD-UP WOULD TAKE PLACE AND THE RESPONDENT ANTICIPATED IT WOULD EMPLOY BETWEEN 150 AND 160 EMPLOYEES IN ITS MINING OPERATIONS BY THE SPRING OF 1968 WHEN THE BUILD-UP WOULD BE COMPLETED.

3. THE RESPONDENT ARGUED THAT THE BOARD SHOULD APPLY ITS USUAL BUILD-UP PRINCIPLE AND DIRECT A VOTE ON SOME FUTURE DATE WHEN THERE WAS A REPRESENTATIVE NUMBER OF EMPLOYEES EMPLOYED BY THE RESPONDENT.

4. IT HAS BEEN THE PRACTICE OF THE BOARD FOR MANY YEARS TO FIND THREE TYPES OF BARGAINING UNITS APPROPRIATE FOR COLLECTIVE BARGAINING IN MINING OPERATIONS. DURING THE PERIOD THAT THE MINE SITE IS UNDER CONSTRUCTION IT IS THE BOARD'S PRACTICE TO FIND THAT A BARGAINING UNIT OF ALL EMPLOYEES ENGAGED IN THE "CONSTRUCTION STAGE" OF THE MINING OPERATIONS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. AFTER THE CONSTRUCTION STAGE HAS BEEN COMPLETED AND DURING THE TIME THAT THE MINE IS BEING DEVELOPED IT IS THE BOARD'S PRACTICE TO FIND THAT ALL EMPLOYEES ENGAGED IN THE "DEVELOPMENT STAGE" OF THE MINING OPERATIONS ARE APPROPRIATE FOR COLLECTIVE BARGAINING. FINALLY, WHEN THE DEVELOPMENT OF THE MINE HAS BEEN COMPLETED AND THE MINE HAS ENTERED THE "PRODUCTION STAGE" OF ITS OPERATIONS, IT IS THE BOARD'S PRACTICE TO DETERMINE THAT A BARGAINING UNIT OF ALL EMPLOYEES OF THE RESPONDENT IN ITS MINING OPERATIONS (WITHOUT QUALIFICATION) IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

5. IT HAS BEEN THE BOARD'S PRACTICE TO FIND THAT A MINE HAS ENTERED THE PRODUCTION STAGE OF ITS OPERATIONS AT SUCH TIME AS THE ORE WHICH HAS BEEN MINED DURING THE DEVELOPMENT STAGE CEASES TO BE STOCK-PILED AND IS EITHER SHIPPED OR PROCESSED THROUGH A MILL AT THE MINE SITE.

6. IN THE INSTANT CASE, IT WOULD APPEAR THAT THE MINE HAS PASSED THE CONSTRUCTION STAGE OF ITS OPERATIONS SINCE THE RESPONDENT HAS TAKEN OVER THE OPERATION OF THE MINE FROM THE CONTRACTOR WHO CONSTRUCTED THE MINE. IT WOULD FURTHER APPEAR FROM THE EVIDENCE THAT SINCE THE ORE PRESENTLY BEING MINED IS BEING STOCK-PILED AND IS AWAITING THE COMPLETION OF THE MILL, THE CONSTRUCTION OF WHICH IS TO BE COMMENCED DURING THE FALL OF 1967, THAT THE MINE IS PRESENTLY IN ITS DEVELOPMENT STAGE.

7. IT HAS BEEN THE BOARD'S LONG STANDING PRACTICE TO DETERMINE THAT THE THREE BARGAINING UNITS DESCRIBED ABOVE ARE APPROPRIATE IN ORDER TO RECONCILE THE BUILD-UP SITUATION WITH THE DESIRE OF THE EMPLOYEES WHO SEEK COLLECTIVE BARGAINING DURING THE VARIOUS STAGES OF A MINE. IN APPLYING THE BUILD-UP PRINCIPLE IN MINING OPERATIONS, IT IS THE BOARD'S PRACTICE THEREFORE TO ASCERTAIN WHICH STAGE A MINE HAS REACHED IN ORDER TO DETERMINE THE APPROPRIATE BARGAINING UNIT RATHER THAN DIRECT A VOTE OF ALL EMPLOYEES AT SOME FUTURE DATE WHEN THE PRODUCTION STAGE OF A MINE HAS BEEN REACHED AND A REPRESENTATIVE NUMBER OF EMPLOYEES HAVE BEEN EMPLOYED.

8. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

9. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT THE RESPONDENT'S MINE HAS ENTERED THE DEVELOPMENT STAGE OF ITS OPERATIONS, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE DEVELOPMENT STAGE OF ITS MINING OPERATIONS IN MICHIPICOTIN TOWNSHIP, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT BOSS AND FOREMAN, CHIEF CHEMIST, ASSISTANT CHIEF CHEMISTS, CHIEF SAMPLER, CHIEF ASSAYER, EMPLOYEES IN THE ENGINEERING AND GEOLOGY DEPARTMENTS, SECURITY GUARDS, OFFICE STAFF (INCLUDING CLERICAL STAFF EMPLOYED IN THE WAREHOUSE) AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 26TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(j) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13264-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DALTON FUELS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

13265-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DALTON FUELS LIMITED  
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT HEARING: W. W. TILLER FOR THE APPLICANT,  
N. MacL. ROGERS Q.C. FOR THE RESPONDENT, AND WALLACE COUVILLON  
FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: July 7, 1967.

1. THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE AND THEY ARE  
HEREBY CONSOLIDATED.

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4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT  
EMPLOYED IN ITS SANDWICH DIAMOND FUELS DIVISION AT WINDSOR, SAVE AND  
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES  
STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR  
COLLECTIVE BARGAINING.

5. THE BOARD INQUIRED INTO THE CIRCUMSTANCES SURROUNDING THE  
ORIGINATION AND CIRCULATION OF A PETITION FILED BY THE OBJECTORS. ON  
THE BASIS OF ALL THE EVIDENCE, THE BOARD FINDS THAT THE PETITION  
SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLI-  
CANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A  
REPRESENTATION VOTE.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE  
IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RES-  
PONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE,  
WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE  
WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

7. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE  
RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN  
THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE  
THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE  
HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO  
BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

9. THE RESPONDENT TOOK THE POSITION THAT THE NUMBER OF EMPLOYEES  
IN THE BARGAINING UNIT AT THE DATE OF THE APPLICATION REPRESENTS A  
SEASONAL LOW, WHICH WOULD INCREASE FROM THE PRESENT FIVE TO NINE, TEN  
OR ELEVEN WHEN THE HEATING SEASON COMMENCED IN NOVEMBER. IT WAS THE



RESPONDENT'S CONTENTION THAT THIS BEING THE SITUATION THE APPLICATION IS UNTIMELY, SINCE THE PERSONS NOW IN THE PROPOSED UNIT DO NOT CONSTITUTE A SUBSTANTIAL SEGMENT OF THE WORK FORCE TO BE EMPLOYED IN NOVEMBER. IN THE OPINION OF THE BOARD THE REPRESENTATIONS SET OUT ABOVE ARE NOT SUFFICIENT TO PERSUADE THE BOARD THAT THE APPLICATION HEREIN IS UNTIMELY.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

13286-67-R: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) (APPLICANT) V. AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND R. W. TEAGLE.

APPEARANCES AT HEARING: ROBERT WHITE FOR THE APPLICANT,  
A. A. WHITE FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 17, 1967.

. . .

2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES CONSISTING OF ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN LOCAL 195 OF THE APPLICANT UNION AND THE RESPONDENT, WHICH AGREEMENT EXPIRES ON MARCH 21ST, 1969.

3. BY THE RECOGNITION CLAUSE OF THE ABOVE REFERRED TO COLLECTIVE AGREEMENT, THE RESPONDENT RECOGNIZES LOCAL 195 AS THE SOLE BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN ESSEX COUNTY, WHICH INCLUDES ITS PLANT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND SALARIED OFFICE STAFF WHEREVER LOCATED.

4. AS OF THE DATE OF APPLICATION THERE WERE ONLY TWO EMPLOYEES IN THE UNIT PROPOSED BY THE APPLICANT. THESE TWO EMPLOYEES ARE CLASSIFIED AS OFFICE CLEANERS, AND ALTHOUGH NOMINALLY UNDER THE PLANT MAINTENANCE SUPERVISOR, VIRTUALLY ALL OF THEIR WORKING HOURS ARE SPENT IN THE RESPONDENT'S OFFICES AT WINDSOR. THE OFFICE CLEANERS ARE NOT PART OF THE BARGAINING UNIT CONTAINED IN THE CURRENT COLLECTIVE AGREEMENT COVERING PLANT EMPLOYEES. THE APPLICANT SUBMITS, HOWEVER, THAT THE TWO EMPLOYEES CONCERNED CONSTITUTE AN APPROPRIATE TAG-END UNIT TO THE PLANT UNIT ALREADY IN EXISTENCE.

5. THE USUAL PRACTICE OF THE BOARD AS ESTABLISHED IN PAST DECISIONS IS TO INCLUDE OFFICE CLEANERS IN BARGAINING UNITS OF OFFICE EMPLOYEES, OFFICE PREMISES BEING THE LOCATION WHERE THEY PERFORM THEIR WORK (SEE BAYCOAT LIMITED CASE, BOARD FILE NO. 12041-66-R).

6. THE BOARD THEREFORE FINDS THAT THE OFFICE CLEANERS DO NOT CONSTITUTE AN APPROPRIATE TAG-END UNIT TO THE EXISTING UNIT OF PLANT EMPLOYEES NOR DO THE OFFICE CLEANERS CONSTITUTE AN APPROPRIATE UNIT BY THEMSELVES.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT THE APPLICANT HAS EVIDENCE OF MEMBERSHIP FOR LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT ON JUNE 27TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT, IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE.

8. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

13300-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE UNIVERSITY OF WATERLOO (RESPONDENT) V. THE UNIVERSITY OF WATERLOO EMPLOYEES UNION LOCAL UNION 793 CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: M. A. HEELEY FOR THE APPLICANT, J. K. SIMS, Q.C., E. S. LUCY AND ALEX CAIRNCROSS FOR THE RESPONDENT, AND W. A. ACTON AND E. MOYNES FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 13, 1967.

1. THE APPLICANT SEEKS CERTIFICATION PURSUANT TO THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT FOR A BARGAINING UNIT CONSISTING OF ALL STATIONARY ENGINEERS, THEIR HELPERS AND OTHERS UNDER THE DIRECTION OF THE CHIEF ENGINEER.

2. THE APPLICANT BROUGHT A SIMILAR APPLICATION BEFORE THE BOARD ON JUNE 28TH, 1965, (BOARD FILE No. 10587-65-R), WHICH THE BOARD DISMISSED IN ITS DECISION OF JULY 27TH, 1965.

3. THE APPLICANT BASED THIS FRESH APPLICATION ON THE GROUND THAT THE STEAM PLANT HAS BEEN MOVED TO A NEW SITUATION. APART FROM THIS, THERE WAS NO EVIDENCE THAT ANY OTHER CHANGES IN THE SITUATION PREVAILING AT THE TIME OF THE 1965 APPLICATION HAD TAKEN PLACE, EXCEPT AS NOTED BELOW. THE COLLECTIVE AGREEMENT THEN IN FORCE BETWEEN THE INTERVENER AND THE RESPONDENT, COVERING, AMONG OTHER EMPLOYEES, THE EMPLOYEES IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT, REMAINED IN FORCE AT THE DATE OF THIS APPLICATION. ITS EXPIRY DATE WAS JUNE 30TH, 1967. THE PARTIES HAVE NOW CONCLUDED NEGOTIATIONS FOR A NEW AGREEMENT WHICH IS TO INCLUDE INCREASES FOR THE PERSONS IN THE PROPOSED BARGAINING UNIT. THERE IS NO EVIDENCE THAT THE INTERVENER HAS FAILED TO EFFECTIVELY REPRESENT THE

3. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF MEDITERRANEAN CONSTRUCTION COMPANY IN THE BARGAINING UNIT WITH WHICH WE ARE HERE CONCERNED ON MARCH 29TH, 1966. ON MARCH 28TH, 1966, NOTWITHSTANDING THE APPLICATION FOR CERTIFICATION, A DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT WAS SIGNED BETWEEN MASONRY CONTRACTORS ASSOCIATION, OF WHICH MEDITERRANEAN CONSTRUCTION COMPANY WAS A MEMBER AT THE TIME, AND LOCAL 1. AMONG OTHER PROVISIONS, THE DOCUMENT PROVIDES THAT THE EMPLOYER WILL EMPLOY ONLY MEMBERS OF BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA, LOCAL 1, BRICKLAYERS ASSISTANTS, AND THAT THERE WILL BE A MONTHLY CHECK-OFF OF UNION DUES. ONE OF THE SIGNATURES ON BEHALF OF LOCAL 1 APPEARS TO BE JOHN MEIORIN.

4. NO COLLECTIVE AGREEMENT HAS BEEN MADE BETWEEN THE RESPONDENT AND MEDITERRANEAN CONSTRUCTION COMPANY FOLLOWING THE CERTIFICATION OF THE RESPONDENT ON MARCH 29TH, 1966.

5. THE DOCUMENT SUBMITTED BY THE APPLICANT WAS PREPARED IN THE OFFICE OF JOHN MEIORIN. HIS TESTIMONY WAS THAT THE EMPLOYEES CONCERNED HAD SPOKEN TO HIM, AFTER THE SIGNING OF THE AGREEMENT BETWEEN LOCAL 1 AND THE MASONARY CONTRACTORS, WITH RESPECT TO TERMINATING THE BARGAINING RIGHTS HELD BY THE RESPONDENT. HE TOLD THE EMPLOYEES THAT THEY WOULD BE REQUIRED TO WAIT UNTIL SIX MONTHS FOLLOWING CERTIFICATION BEFORE APPLYING FOR TERMINATION. HIS EVIDENCE WAS THAT THE EMPLOYEES LEFT IT UP TO HIM TO LET THEM KNOW WHEN THE REQUIRED TIME HAD EXPIRED. AT THE EXPIRATION OF THE SIX MONTHS HE ASKED LA POSTA IF HE WOULD BE THE APPLICANT, LA POSTA CONSENTED.

6. IN GETTING THE DOCUMENT SIGNED MEIORIN VISITED THREE DIFFERENT JOB SITES. AT THE FIRST SITE THREE OR FOUR OF THE EMPLOYEES SIGNED THE DOCUMENT. THIS WAS DONE DURING WORKING HOURS AND, ACCORDING TO THE WITNESS, TOOK BETWEEN TEN AND FIFTEEN MINUTES TO COMPLETE. DURING THIS TIME ONE OF THE OWNERS OF THE COMPANY WAS WORKING ON THE SITE. THE EVIDENCE IS THAT THIS MAN PROBABLY SAW THE EMPLOYEES SIGN THE DOCUMENT. THERE IS NO DOUBT THAT THE EMPLOYEES WERE AWARE OF THE PRESENCE OF THE OWNER. NO PERMISSION WAS SOUGHT FOR THE INTERRUPTION OF THE WORK AND NOTHING WAS SAID BY THE OWNER TO MEIORIN OR ANY OF THE EMPLOYEES DURING THE PROCESS OF SIGNING. THE OWNER WAVED TO MEIORIN AS HE LEFT. A SECOND GROUP OF EMPLOYEES SIGNED THE DOCUMENT AT ANOTHER JOB SITE. ONE OF THE OWNERS OF THE COMPANY WAS ALSO PRESENT ON THIS PROJECT DURING THE SIGNING OF THE DOCUMENT. HIS PRESENCE WAS KNOWN TO THE EMPLOYEES. THERE WAS ALSO A REPRESENTATIVE OF THE OWNERS AT THE THIRD PROJECT VISITED BY MEIORIN. HERE A BIT OF AN ARGUMENT, TO USE THE WORDS OF THE WITNESS, AROSE BECAUSE, ALTHOUGH THE SIGNING COMMENCED BEFORE STARTING TIME, PEOPLE WERE STILL SIGNING AFTER THEY WERE SUPPOSED TO HAVE COMMENCED WORK.

7. IN THE OPINION OF THE BOARD, THE EVIDENCE WITH RESPECT TO CIRCUMSTANCES PREVAILING AT THE TIME OF THE CERTIFICATION OF THE RESPONDENT, WHEN, IN THE VERY TEETH OF THE APPLICATION, AN ALLEGED COLLECTIVE AGREEMENT WAS ENTERED INTO BETWEEN LOCAL 1 AND MEDITERRANEAN CONSTRUCTION COMPANY,



TOGETHER WITH THE EVIDENCE CONCERNING THE ORIGINATION OF THE DOCUMENT FILED REQUESTING TERMINATION AND CONCERNING THE MANNER IN WHICH SIGNATURES THERETO WERE OBTAINED, CLEARLY INDICATES A SITUATION IN WHICH NO ROOM COULD EXIST FOR THE FREE AND UNINHIBITED EXERCISE OF CHOICE ON THE PART OF THE EMPLOYEES CONCERNED AS TO WHETHER TO SIGN THE REQUEST FOR TERMINATION. THE DOCUMENT WAS PRESENTED TO THEM VIRTUALLY UNDER THE EYES OF THE OWNERS OF THE COMPANY AND BY THE REPRESENTATIVE OF A UNION TO WHICH THE COMPANY HAD SHOWN A PREFERENCE.

8. THE BOARD IS NOT SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF MEDITERRANEAN CONSTRUCTION COMPANY IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON MAY 29TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77 (2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43 (3) OF THE SAID ACT.

9. THE APPLICATION IS THEREFORE DISMISSED.

13170-67-R: JOHN SALAJKA (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206 (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT HEARING: W. M. TEMPLE AND JOHN SALAJKA FOR THE APPLICANT, AND IAN SCOTT AND CLIFFORD EVANS FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
D. B. ARCHER: JULY 13, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT, BROUGHT UNDER SECTION 43 OF THE LABOUR RELATIONS ACT.

2. IN SUPPORT OF THE APPLICATION THE APPLICANT SUBMITTED A DOCUMENT HEADED "THE UNDERSIGNED EMPLOYEES OF JANETTE I.G.A. NO LONGER WISH TO BE REPRESENTED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206, AS THEIR BARGAINING AGENT WITH JANETTE I.G.A." THE DOCUMENT BEARS THE SIGNATURES OF NINE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE RESPONDENT IS THE BARGAINING AGENT. THIS REPRESENTS OVER FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT.

3. THE RESPONDENT SUBMITTED THAT THE ABOVE DOCUMENT WAS THE SECOND OF TWO PETITIONS. IT ALLEGED THAT THE FIRST PETITION WAS OBTAINED IN CIRCUMSTANCES WHICH WOULD RENDER IT UNACCEPTABLE TO THE BOARD AS BEING



INDICATIVE OF THE VOLUNTARY WISHES OF THE EMPLOYEES, AND THAT IT WAS BECAUSE OF THAT FACT THAT IT WAS REPLACED BY THE SECOND DOCUMENT. THE LATTER, INCIDENTALLY, IS THE ONLY PETITION TO ACTUALLY COME BEFORE THE BOARD. THE RESPONDENT ARGUED THAT THE FAULTS OF THE FIRST PETITION MUST BE VISITED UPON THE SECOND AND THAT THE LATTER IS THEREFORE AS UNACCEPTABLE AS, IN THE SUBMISSION OF THE RESPONDENT, WAS THE FIRST.

4. THE APPLICANT'S SOLICITOR OBJECTED TO REFERENCE BEING MADE TO A DOCUMENT NOT FILED BEFORE THE BOARD. THE MATTER HAD, HOWEVER, BEEN RAISED IN THE PLEADINGS. THE EVIDENCE WITH RESPECT TO THE FIRST PETITION IS THAT IT WAS CONCEIVED BY THE EMPLOYEES IN THE BARGAINING UNIT WHO UNANIMOUSLY DECIDED THAT THEY NO LONGER WANTED THE UNION. THE APPLICANT, JOHN SALAJKA, WAS THE LEADER OF THE EMPLOYEE GROUP. IN ORDER TO OBTAIN ASSISTANCE AND ADVICE IN THE MATTER HE WENT TO SEE THE SOLICITOR FOR THE COMPANY. THIS MOVE ON THE PART OF SALAJKA WAS ENTIRELY HIS OWN AND WAS, INsofar AS THE EVIDENCE GOES, UNINSPIRED BY ANYONE IN MANAGEMENT. HE HAD SEEN THE SOLICITOR IN THE STORE ON NUMEROUS OCCASIONS AND KNEW HIS OCCUPATION AND HIS CONNECTION WITH THE STORE MANAGEMENT. SALAJKA APPEARS TO HAVE THOUGHT THAT THIS SOLICITOR WAS THE OBVIOUS PERSON TO SEE. THE SOLICITOR PREPARED A PETITION AND DELIVERED IT TO SALAJKA, WHOM HE MET BY APPOINTMENT AT A RESTAURANT CLOSE TO THE EMPLOYER'S STORE.

5. SALAJKA TOOK THE DOCUMENT BACK TO THE STORE WITH THE PURPOSE OF HAVING THE EMPLOYEES SIGN IT. AFTER ONE SIGNATURE HAD BEEN OBTAINED, IN THE STORE DURING WORKING HOURS, SALAJKA WAS ASKED BY THE SON-IN-LAW OF THE PROPRIETRESS OF THE STORE WHAT HE WAS DOING WITH THE PAPER. SALAJKA EXPLAINED THAT THE EMPLOYEES HAD DECIDED AGAINST THE UNION. THE SON-IN-LAW SAID IT WAS NONE OF HIS BUSINESS AND THE DISCUSSION ENDED THERE. SOME TIME LATER, FOLLOWING AN INQUIRY MADE IN THE STORE BY THE OWNER AS TO WHAT HE WAS DOING, HE SHOWED HER THE PETITION AND EXPLAINED THAT THE EMPLOYEES WERE TRYING TO GET RID OF THE UNION. THERE WAS ONE SIGNATURE ON THE PETITION AT THIS TIME. WHEN ALL THE EMPLOYEES IN THE BARGAINING UNIT HAD SIGNED THE PETITION, SALAJKA PUT IT IN AN ENVELOPE, WHICH HE LEFT IN THE STORE OFFICE. SUBSEQUENTLY HE HAD THE LETTER DELIVERED TO THE SOLICITOR BY ONE OF THE PART TIME EMPLOYEES.

6. THE EVIDENCE DISCLOSED THAT THE SOLICITOR FORWARDED TO THE RESPONDENT A PHOTOSTATIC COPY OF THE PETITION TOGETHER WITH THE FOLLOWING LETTER.

YOUR CORRESPONDENCE OF THE 27TH DAY OF APRIL 1967 HAS BEEN REFERRED TO THE WRITER HEREIN FOR REPLY.

PLEASE BE HEREBY ADVISED THAT IN ACCORDANCE WITH ARTICLE 24, SUBSECTION 2 OF THE AGREEMENT MY CLIENT WILL BE APPLYING FOR A TERMINATION OF THE AGREEMENT PRESENTLY IN EXISTENCE AND LET THIS BE SUFFICIENT NOTICE TO YOU OF HER INTENTION.

YOU WILL FIND ENCLOSED HERewith A CHEQUE MADE PAYABLE TO THE RETAIL CLERKS INTERNATIONAL ASSOCIATION IN THE AMOUNT OF \$57.96 WHICH, ACCORDING TO MY CLIENT, REPRESENTS THE UNION DUES OWING FROM THE 1ST DAY OF MARCH, 1967 TO THE LAST DAY OF APRIL, 1967.

AT THE PRESENT I WILL NOT GO INTO A BREAKDOWN OF THE SAID DUES BUT I WILL BE MOST GLAD TO DISCUSS THE SAME WITH YOU AT YOUR CONVENIENCE.

I SHALL BE WRITING TO THE ONTARIO LABOUR RELATIONS BOARD IN RESPECT TO THE APPLICATION FOR TERMINATION IN THE VERY NEAR FUTURE AND I SHALL KEEP YOU POSTED ON MY PROGRESS.

ENCLOSED HERewith PLEASE FIND A PHOTOSTATIC COPY OF A REQUEST BY THE EMPLOYEES OF JANETTE I.G.A. TO HAVE YOUR REPRESENTATION RIGHTS TERMINATED.

7. THE LETTER OF THE 27TH DAY OF APRIL, 1967 WAS A REQUEST FROM THE UNION RESPONDENT HEREIN TO OPEN NEGOTIATIONS FOR A RENEWAL OF THE COLLECTIVE AGREEMENT.

8. FOLLOWING RECEIPT OF THE FOREGOING LETTER AND PHOTOSTAT, THE UNION ADVISED THE SOLICITOR THAT IN ITS OPINION THE PETITION WOULD NOT BE ACCEPTABLE TO THE BOARD. THE SOLICITOR TELEPHONED SALAJKA AND ADVISED HIM THAT THE PETITION WAS NO GOOD AND THAT HE SHOULD SEEK LEGAL ADVICE ELSEWHERE. THE SOLICITOR MENTIONED THE NAMES OF THREE LAWYERS WHOM HE THOUGHT WERE FAMILIAR WITH LABOUR MATTERS, AND OF THESE THE APPLICANT CHOSE MR. TEMPLE.

9. ON THE BASIS OF THE FOREGOING FACTS THE RESPONDENT SUBMITS THAT THE FIRST PETITION WAS INVALID AND THAT ITS INVALIDITY TAINTS THE SECOND DOCUMENT TO A DEGREE SUFFICIENT TO RENDER IT UNACCEPTABLE ON THE BOARD'S USUAL STANDARDS.

10. IN OUR OPINION THE CIRCUMSTANCES SURROUNDING THE ORIGATION OF THE FIRST PETITION, THE FACT THAT THE EMPLOYEES MUST HAVE BEEN AWARE THAT MANAGEMENT KNEW THE NATURE OF THE DOCUMENT AND THE PURPOSE FOR WHICH IT WAS BEING CIRCULATED, AND THE FREE AND OPEN CIRCULATION OF THE DOCUMENT DURING WORKING HOURS, ARE ALL MATTERS WHICH WOULD AFFECT EMPLOYEES IN A SITUATION SUCH AS THIS, SO AS TO MAKE IT IMPOSSIBLE FOR THEM TO GIVE FREE EXPRESSION TO THEIR TRUE WISHES.

11. OBVIOUSLY, THE SECOND PETITION WAS MEANT TO CURE THE FAULTS OF THE FIRST. IN OUR OPINION THE SECOND PETITION CANNOT BE VIEWED IN ISOLATION AND MUST BE DEEMED TO BE AN EMANATION OF THE FIRST SO CLOSELY CONNECTED THERETO IN TIME AND IN NATURE AS TO BE INCAPABLE OF DIVORCE FROM IT. THE DRAFTING OF A NEW PETITION BY A SOLICITOR UNCONNECTED WITH THE COMPANY, WHILE PERHAPS TENDING TO CURE ONE FAULTY ASPECT OF THE SITUATION DOES NOTHING FOR THE OTHERS. FURTHERMORE, AT THE TIME OF

THE CIRCULATION OF THE SECOND PETITION THE EMPLOYEES WERE AWARE THAT THE COMPANY KNEW WHO HAD SIGNED THE FIRST DOCUMENT, A MATTER MOST LIKELY TO INFLUENCE THEM WHEN THE SECOND PAPER WAS PRESENTED TO THEM.

12. THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY IT THAT THE DOCUMENT FILED HEREIN REPRESENTS THE VOLUNTARY SIGNIFICATION OF THE EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT, AND THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER F. W. MURRAY:

JULY 13, 1967.

I DISSENT.

IN CONSIDERING ALL OF THE EVIDENCE IN THIS CASE, I DO NOT BELIEVE THAT THE FAULTS OR DEFECTS OF THE FIRST PETITION SHOULD BE VISITED UPON THE SECOND PETITION SO AS TO RENDER THE SECOND PETITION UNACCEPTABLE TO THE BOARD.

I WOULD HAVE ACCEPTED THE SECOND PETITION AS REPRESENTATIVE OF THE VOLUNTARY SIGNIFICATION OF THE EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT AND ACCORDINGLY I WOULD HAVE ORDERED THE TAKING OF A REPRESENTATION VOTE.

13310-67-R: BYRON FROUDE AND R. (DICK) HAYWARD (APPLICANTS) V.  
PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (RESPONDENT) V.  
E. S. AND A. ROBINSON (CANADA) LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT HEARING: R. HAYWARD AND BYRON FROUDE FOR THE  
APPLICANTS, H. M. POLLIT FOR THE RESPONDENT, D. G. PYLE,  
W. H. LAPP, R. N. FERGUSON AND K. R. BERTRAM FOR THE INTERVENER.

DECISION OF THE BOARD:

JULY 19, 1967.

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3. THE RESPONDENT IS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE INTERVENER "WITHIN THE JURISDICTION OF THE UNION" IN THE PLANT OF THE INTERVENER AT 69 LAIRD DRIVE, TORONTO 17.

4. THE APPLICANTS HAVE APPLIED FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT, PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

5. AS ANNOUNCED AT THE HEARING, THE LIST OF EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT AS OF THE DATE OF THE MAKING OF THIS APPLICATION CONTAINED A TOTAL OF 506 PERSONS.

THE APPLICANTS FILED IN SUPPORT OF THEIR APPLICATION, DOCUMENTS, SIGNED BY A TOTAL OF 260 PERSONS WHOSE NAMES APPEARED ON THE LIST OF 506 PERSONS REFERRED TO ABOVE, WHEREIN THEY SIGNIFY THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

6. PRIOR TO THE TERMINAL DATE OF THE APPLICATION THE RESPONDENT FILED DOCUMENTS SIGNED BY 144 EMPLOYEES WHICH INDICATED THAT THE EMPLOYEES "WANT TO RETAIN PRINTING SPECIALTY & PAPER PRODUCTS UNION LOCAL 466 AS THE UNION TO REPRESENT" THEM. OF THE 144 SIGNATURES ON THE RESPONDENT'S DOCUMENTS, 18 HAD SIGNED THE DOCUMENTS IN SUPPORT OF THE APPLICATION. THE DOCUMENTARY EVIDENCE SUBMITTED BY THE APPLICANTS IS OF THE SAME NATURE AND EVIDENTIARY VALUE AS THE DOCUMENTARY EVIDENCE SUBMITTED BY THE RESPONDENT. IF EFFECT WERE GIVEN TO THE WISHES OF THE 18 PERSONS WHO SIGNED THE RESPONDENT'S DOCUMENTS WHO HAD ALSO SIGNED THE APPLICANTS' DOCUMENTS, THE APPLICANTS' PETITION WOULD BE REDUCED BY THE 18 SIGNATURES.

7. AT THE HEARING IN THIS MATTER, THE BOARD, FOR THE PURPOSE OF DETERMINING WHAT EFFECT SHOULD BE GIVEN TO THE DOCUMENTS SUBMITTED BY THE RESPONDENT, ASSUMED THAT EVERYTHING WAS IN ORDER WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS FILED BY THE APPLICANTS, AND PROCEEDED FIRST TO CONDUCT AN INQUIRY INTO THE DOCUMENTS SUBMITTED BY THE RESPONDENT. THE RESPONDENT'S WITNESSES TESTIFIED CONCERNING THE ORIGINATION OF, AND THE MANNER IN WHICH ITS DOCUMENTS CAME TO BE SIGNED BY CERTAIN EMPLOYEES, INCLUDING THE SIGNATURES OF 15 OF THE 18 PERSONS WHO HAD ALSO SIGNED THE DOCUMENTS SUBMITTED BY THE APPLICANTS IN SUPPORT OF THE APPLICATION. IT ALSO APPEARED THAT ALL 15 PERSONS HAD SIGNED THE RESPONDENT'S DOCUMENTS AFTER THEY HAD SIGNED THE DOCUMENTS IN SUPPORT OF THE APPLICATION.

8. SINCE THE ORIGINAL 260 SIGNATURES ON THE APPLICANTS' DOCUMENTS ARE REDUCED BY THE 15 OVERLAPPING SIGNATURES ON THE RESPONDENT'S SUBSEQUENT COUNTER-PETITION, IT THEREFORE FOLLOWS THAT EVEN IF EVERYTHING WAS IN ORDER WITH RESPECT TO THE APPLICANTS' DOCUMENTARY EVIDENCE, ONLY 245 EMPLOYEES IN THE BARGAINING UNIT HAVE SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE UNION AS OF THE TERMINAL DATE OF THIS APPLICATION.

9. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON JULY 7TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

10. THE APPLICATION IS THEREFORE DISMISSED.



INDEXED ENDORSEMENT - STRIKE UNLAWFUL

13410-67-U: WESTEEL-ROSCO LIMITED (FORMERLY ROSCO METAL PRODUCTS LIMITED) (APPLICANT) V. UNITED STEELWORKERS OF AMERICA, LOCAL 6448 (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: G. W. HATELY, NORMAN J. LONG, JOHN DOUWES AND EVERETT BULGIN FOR THE APPLICANT, AND LORNE INGLE AND JOHN FITZPATRICK FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 31, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.
2. FOLLOWING NEGOTIATIONS BETWEEN THE PARTIES FOR THE RENEWAL OF A COLLECTIVE AGREEMENT AND AFTER A CONCILIATION OFFICER HAD BEEN APPOINTED, THE MINISTER OF LABOUR RELEASED TO THE PARTIES A NOTICE THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. THIS NOTICE WAS EMBODIED IN A LETTER DATED JULY 14TH, 1967.
3. SECTION 85 (3) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

A DECISION, DETERMINATION, REPORT, INTERIM ORDER, ORDER, DIRECTION, DECLARATION OR RULING OF THE BOARD, A NOTICE FROM THE MINISTER THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD, A NOTICE FROM THE MINISTER OF A REPORT OF A CONCILIATION BOARD OR OF A MEDIATOR, OR A DECISION OF AN ARBITRATOR OR OF AN ARBITRATION BOARD,

- (A) IF SENT BY MAIL TO THE PERSON, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED ADDRESSED TO HIM OR IT AT HIS OR ITS LAST-KNOWN ADDRESS, SHALL BE DEEMED TO HAVE BEEN RELEASED ON THE SECOND DAY AFTER THE DAY ON WHICH IT WAS SO MAILED; OR
- (B) IF DELIVERED TO A PERSON, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED AT HIS OR ITS LAST-KNOWN ADDRESS, SHALL BE DEEMED TO HAVE BEEN RELEASED ON THE DAY NEXT AFTER THE DAY ON WHICH IT WAS SO DELIVERED.

IT WOULD APPEAR IN THE INSTANT CASE THAT THE NOTICE WOULD BE DEEMED TO HAVE BEEN RELEASED ON JULY 16TH, 1967.

4. SECTION 54 (2) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

WHERE NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYEE SHALL STRIKE AND NO EMPLOYER SHALL LOCK OUT AN EMPLOYEE UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

- (A) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR; OR
- (B) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE.

SINCE THE NOTICE FROM THE MINISTER IS DEEMED TO HAVE BEEN RELEASED ON JULY 16TH, 1967, IT WOULD APPEAR, IN THE INSTANT CASE, THAT THE PROVISIONS OF SECTION 54 (2) OF THE ACT PROHIBITED ANY STRIKE OR LOCKOUT BY THE PERSONS CONCERNED PRIOR TO JULY 31ST, 1967.

5. THE EVIDENCE BEFORE THE BOARD ESTABLISHES THAT EMPLOYEES OF THE APPLICANT COMPANY ENGAGED IN A STRIKE WHICH BEGAN ON JULY 18TH, 1967, AND WHICH STILL CONTINUES. ALTHOUGH COUNSEL FOR THE RESPONDENT ARGUED TO THE CONTRARY, IT IS CLEAR TO US, ON THE EVIDENCE, THAT EMPLOYEES OF THE APPLICANT ENGAGED IN AND CONTINUE TO ENGAGE IN A STRIKE WITHIN THE MEANING OF SECTION 1 (1) (i) OF THE LABOUR RELATIONS ACT. THIS STRIKE IS CLEARLY UNLAWFUL.

6. THE RESPONDENT IN THE INSTANT CASE, UNITED STEELWORKERS OF AMERICA, LOCAL 6448, DID NOT CALL THE STRIKE WHICH HAS TAKEN PLACE, NOR DID IT OFFICIALLY OR EXPLICITLY "AUTHORIZE" IT. IT IS CLEAR, ON THE EVIDENCE, HOWEVER, THAT THE RESPONDENT UNION, THROUGH ITS OFFICERS, PARTICIPATED IN AND ABETTED THE STRIKE. SECTION 72 (2) OF THE LABOUR RELATIONS ACT MAY BE REFERRED TO IN THIS CONNECTION.

7. THIS IS NOT A SITUATION IN WHICH THE RANK AND FILE EMPLOYEES OF THE APPLICANT COMPANY COULD BE SAID TO HAVE REPUDIATED THE UNION LEADERSHIP. IF THAT WERE SO, THE RESPONDENT MIGHT BE RELIEVED OF RESPONSIBILITY. IN THE INSTANT CASE, HOWEVER, THE RESPONDENT UNION HAD FAILED TO TAKE MEANINGFUL MEASURES TO END THE STRIKE. IN OUR VIEW, THE CIRCUMSTANCES OF THIS CASE ARE CONSISTENT ONLY WITH THE CONCLUSION THAT THERE WAS IMPLIED AUTHORIZATION FOR THE STRIKE. IN THIS CONNECTION REFERENCE MAY BE MADE TO THE ARVO TUOMI CASE, C.L.S. 76-387.

8. PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENT, UNITED STEELWORKERS OF AMERICA, LOCAL 6448, CALLED OR AUTHORIZED AN UNLAWFUL STRIKE ENGAGED IN

BY EMPLOYEES OF THE APPLICANT CONTRARY TO THE PROVISIONS OF SECTION 54 OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENTS - PROSECUTION

13132-67-U: UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 514 (APPLICANT) V. SCM (CANADA) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: LAURENCE C. ARNOLD AND ROSS RUSSELL FOR THE APPLICANT, PURDY CRAWFORD, RON ELLIS AND H. J. BOWERS FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 26, 1967.

1. THE APPLICANT HAS APPLIED FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT AND HAS ALLEGED THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.
2. THE RELEVANT FACTS MAY BE SUMMARIZED AS FOLLOWS. FOLLOWING A TWENTY YEAR BARGAINING RELATIONSHIP, THE PARTIES ENTERED INTO NEGOTIATIONS IN THE MONTH OF DECEMBER, 1966, FOR RENEWAL OF THEIR COLLECTIVE AGREEMENT. THESE NEGOTIATIONS PROVED UNSUCCESSFUL AND AFTER THE PARTIES HAD EXHAUSTED THE CONCILIATION PROCESSES, THE APPLICANT COMMENCED A LAWFUL STRIKE AGAINST THE RESPONDENT ON MARCH 8TH, 1967, AND THE OPERATIONS AT THE STRUCK PLANT CAME TO A HALT.
3. IN APRIL, 1967, THE RESPONDENT INITIATED FURTHER BARGAINING. ON MAY 4TH, 1967, THE RESPONDENT MADE CERTAIN PROPOSALS TO THE APPLICANT'S BARGAINING COMMITTEE AS A FINAL OFFER. THE APPLICANT'S BARGAINING COMMITTEE ADVISED THE RESPONDENT THAT THEY WERE NOT PREPARED TO RECOMMEND ACCEPTANCE OF THE RESPONDENT'S PROPOSALS TO THEIR MEMBERSHIP. ON MAY 4TH, 1967, THE RESPONDENT ADVISED THE EMPLOYEES BY PAMPHLET THAT IT HAD MADE A FINAL OFFER AND ATTACHED A COPY OF THE TERMS OF THE FINAL OFFER TO THE PAMPHLET. THE TERMS OF THE FINAL OFFER WERE TO BE ADDED TO THE TERMS OF THE COLLECTIVE AGREEMENT WHICH HAD EXPIRED.
4. ON MAY 5TH, THE RESPONDENT AGAIN WROTE TO ITS EMPLOYEES AND ATTACHED A COPY OF THE PROPOSED AMENDMENTS TO THE EXPIRED COLLECTIVE AGREEMENT. THIS LETTER READS AS FOLLOWS:

AS YOU ARE AWARE, YOUR COMPANY AND YOUR UNION  
HAVE BEEN NEGOTIATING FOR THE PAST FIVE MONTHS  
WITH A VIEW TO ARRIVING AT A NEW COLLECTIVE  
AGREEMENT.

UNFORTUNATELY, WE HAVE NOT BEEN SUCCESSFUL. WE HAVE MADE WHAT WE FEEL IS A VERY FAIR OFFER INCREASING YOUR WAGES AND FRINGE BENEFITS SUBSTANTIALLY. YOU PROBABLY HAVE SEEN AN OUTLINE OF THIS OFFER, A COPY OF WHICH IS ENCLOSED. THIS IS OUR FINAL OFFER.

WE ARE WILLING, AS WE STATED TO YOUR UNION COMMITTEE, TO SIGN AN AGREEMENT BASED ON THE TERMS OUTLINED.

GIVE THIS MATTER YOUR CAREFUL CONSIDERATION. YOUR FUTURE IS AT STAKE.

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1. A TWO YEAR CONTRACT EFFECTIVE MAY 8, 1967 AND EXPIRING ON MAY 7, 1969.
2. (A) EFFECTIVE MAY 8, 1967 ALL HOURLY WAGE RATES WILL INCREASE BY 6% AND ALL PACED LINE CLASSIFICATIONS WILL RECEIVE AN ADDITIONAL INCREASE OF 1%.  
(B) EFFECTIVE FEBRUARY 5, 1968, ALL HOURLY WAGE RATES WILL BE INCREASED BY 4%. ATTACHED IS A SCHEDULE OF THE REVISED WAGE RATES.
3. (A) WAGE RATE FOR FINAL REPAIRMAN CLASSIFICATION WILL BE ADJUSTED TO THE SAME RATE AS TYPE ADJUSTER CLASSIFICATION.  
(B) WAGE RATE FOR STOCK CONTROLLER CLASSIFICATION WILL BE INCREASED BY NINE CENTS PER HOUR (EFFECTIVE MAY 8, 1967).
4. THE WEEKLY MAXIMUM SICKNESS AND ACCIDENT BENEFIT WILL BE INCREASED TO \$50.00.
5. EMPLOYEES WILL BE PAID THEIR STANDARD RATE FOR THE BALANCE OF THE DAY WHEN REQUIRED TO LEAVE THE PLANT AS A RESULT OF AN OCCUPATIONAL INJURY.
6. THE VACATION SCHEDULE WILL BE AMENDED TO PROVIDE TWO WEEKS (4%) PAID VACATION AFTER TWO YEARS OF CONTINUOUS SERVICE AND THREE WEEKS (6%) AFTER TEN YEARS OF CONTINUOUS SERVICE.
7. BOXING DAY WILL BE RECOGNIZED AS AN ADDITIONAL PAID HOLIDAY.
8. A JOB POSTING PROCEDURE WILL BE ESTABLISHED.



9. THE BEREAVEMENT PAY BENEFIT WILL BE EXTENDED TO INCLUDE THE MOTHER-IN-LAW AND FATHER-IN-LAW OF THE EMPLOYEE.
  10. THE COLLECTIVE AGREEMENT WILL PROVIDE FOR ONE UNION STEWARD FOR EACH 35 HOURLY EMPLOYEES.
  11. IF THIS AGREEMENT IS ACCEPTED BY THE UNION MEMBERSHIP, THE COMPANY WILL MAKE A RETROACTIVE PAYMENT OF \$30.00 TO EACH HOURLY EMPLOYEE WHO WAS ON THE PAYROLL ON JANUARY 31, 1967 AND STILL ON THE PAYROLL AT THE SIGNING OF THE AGREEMENT.
5. INFORMATION CAME TO THE RESPONDENT THAT THE APPLICANT HAD CALLED A MEETING OF EMPLOYEES FOR SUNDAY, MAY 7TH. THE PICKETS IN FRONT THE RESPONDENT'S PLANT STOPPED PICKETING WHILE THE MEETING WAS IN PROGRESS, BUT AFTER THE MEETING ENDED THE PICKETS AGAIN TOOK UP THEIR POSITION IN FRONT OF THE RESPONDENT'S PLANT. WHILE NO FORMAL NOTICE WAS SENT BY THE UNION TO THE COMPANY THAT THE EMPLOYEES HAD REJECTED THE COMPANY'S OFFER, THE RESPONDENT CORRECTLY ASSUMED THAT SINCE THE PLANT WAS AGAIN BEING PICKETED, THEIR OFFER HAD BEEN TURNED DOWN BY THE EMPLOYEES.
6. FOLLOWING THE RETURN OF THE PICKETS, THE COMPANY ON MAY 7TH AGAIN DISTRIBUTED A LETTER TO THE EMPLOYEES, WHICH READS AS FOLLOWS:

I AM WRITING THIS LETTER TO YOU BECAUSE YOU ARE ONE OF OUR MOST IMPORTANT ASSETS - A VALUED EMPLOYEE OF SCM (CANADA) LIMITED.

YOUR COMPANY HAS TRIED TO THE BEST OF ITS ABILITY TO NEGOTIATE A FAIR SETTLEMENT WITH THE UNION COMMITTEE. UNFORTUNATELY, OUR EFFORTS HAVE BEEN UNSUCCESSFUL.

BECAUSE OUR PLANT CANNOT REMAIN CLOSED, WE INTEND TO GET BACK INTO OPERATION TOMORROW, MAY 8, 1967. YOUR JOB IS WAITING FOR YOU AND WE WILL BE HAPPY TO HAVE YOU BACK.

THE POLICIES OF YOUR COMPANY WILL BE THE SAME AS THEY HAVE BEEN IN THE RECENT PAST.

THE OFFER WHICH WE MADE TO THE UNION ON MAY 4, 1967, IS OUTLINED IN THE ENCLOSURE, AND WILL BE PUT INTO EFFECT TOMORROW, MAY 8TH.

YOU KNOW THE HISTORY OF SCM IN CANADA. WE HAVE PROVIDED YOU WITH GOOD WORKING CONDITIONS, GOOD WAGES AND GOOD BENEFITS. YOU KNOW THAT OUR WAGE RATES ARE AS GOOD AS, OR BETTER THAN, THOSE OF COMPANIES IN THIS AREA PERFORMING SIMILAR WORK.

YOU ALSO KNOW THAT COMPETITION IN THE TYPEWRITER' INDUSTRY IS BECOMING GREATER EVERY DAY. YOUR COMPANY HAD TO TAKE ALL OF THESE FACTORS INTO CONSIDERATION BEFORE MAKING OUR FINAL OFFER.  
WE WILL NOT INCREASE OUR OFFER.

WE KNOW THAT YOU UNDERSTAND AND WE ARE ASKING FOR YOUR SUPPORT. I WILL BE HAPPY TO SEE YOU AGAIN.  
WELCOME BACK.

7. IN ACCORDANCE WITH THE ADVICE CONTAINED IN THE COMPANY'S LETTER OF MAY 7TH, THE RESPONDENT REOPENED ITS PLANT ON MAY 8TH, AND AS THE WEEK PROGRESSED, EMPLOYEES BEGAN TO RETURN TO WORK AND NEW EMPLOYEES WERE HIRED IN RESPONSE TO A NEWSPAPER ADVERTISEMENT. BY FRIDAY, MAY 12TH, FORTY-FIVE STRIKERS HAD RETURNED TO WORK AND TWENTY-NINE NEW EMPLOYEES HAD BEEN HIRED, MAKING A TOTAL OF SEVENTY-FOUR EMPLOYEES EMPLOYED AS OF THAT DATE.

8. AT THE APPLICANT'S REQUEST, A MEETING WITH THE COMPANY HAD BEEN SCHEDULED FOR MAY 12TH AT THE OFFICES OF THE CONCILIATION OFFICER. HOWEVER, THIS MEETING WAS ADJOURNED TO MAY 16TH, AT THE COMPANY'S REQUEST.

9. THE APPLICANT HELD A MEMBERSHIP MEETING ON FRIDAY, MAY 12TH, WHICH VOTED TO ACCEPT THE MAY 4TH OFFER OF THE RESPONDENT. THE APPLICANT THEN SENT A TELEGRAM TO THE COMPANY, WHICH READS AS FOLLOWS:

COPY OF FOLLOWING TELEGRAM HAS BEEN SENT  
TO MR WILLIAM DICKIE CHIEF CONCILIATION  
OFFICER DEPARTMENT OF LABOUR 3 YORK STREET  
TORONTO EMPLOYEES OF YOUR COMPANY VOTED  
BY MAJORITY THIS EVENING TO AUTHORIZE UNION  
TO SIGN NEW COLLECTIVE AGREEMENT ON TERMS  
OFFERED BY COMPANY MAY 4/67 AND CONFIRMED  
BY YOUR LETTER TO EMPLOYEES OF MAY 5/67 STOP  
OUR MEETING INSTRUCTION UNION COMMITTEE TO SIGN  
AGREEMENT ON TERMS PREVIOUSLY PROPOSED BY YOU  
AT THE MEETING DIRECTED BY MINISTER OF LABOUR  
ON TUESDAY MAY 16TH AT WHICH TIME OUR MEMBERS  
ARE INSTRUCTED TO IMMEDIATELY RETURN TO WORK

THIS TELEGRAM WAS NOT RECEIVED BY THE COMPANY UNTIL MONDAY, MAY 15TH, BECAUSE THE COMPANY OFFICES WERE CLOSED ON SATURDAY, MAY 13TH AND SUNDAY, MAY 14TH. THIS FACT IS CONFIRMED BY A NOTATION ON THE BACK OF THE TELEGRAM MADE BY CANADIAN NATIONAL TELECOMMUNICATIONS.

10. THE RESPONDENT, HAVING BEEN INFORMED THAT THE EMPLOYEES WERE MEETING ON MAY 12TH TO VOTE ON THE TERMS IT HAD PROPOSED ON MAY 4TH, SENT THE FOLLOWING TELEGRAM TO THE UNION WHICH WAS RECEIVED AFTER THE MEETING ON MAY 12TH:

IT HAS COME TO OUR ATTENTION THAT YOU MAY BE ACTING ON THE ASSUMPTION THAT OUR OFFER OF MAY 4, 1967 STILL IS OPEN FOR ACCEPTANCE. THIS IS TO ADVISE YOU THAT BECAUSE THE UNION AND ITS MEMBERSHIP REJECTED THE COMPANY'S OFFER OF SETTLEMENT MADE TO THE UNION NEGOTIATING COMMITTEE DURING OUR MEETING OF MAY 4, 1967, THE COMPANY'S OFFER AS STATED CEASED TO BE A BASIS FOR A COLLECTIVE AGREEMENT

11. THE APPLICANT AND THE RESPONDENT MET ON MAY 16TH AT THE OFFICES OF THE CONCILIATION OFFICER, AND THE RESPONDENT ADVISED THE APPLICANT THAT IT WAS NOT PREPARED TO SIGN A COLLECTIVE AGREEMENT BASED ON THE TERMS OF ITS OFFER OF MAY 4TH. THE RESPONDENT TOOK THE POSITION THAT WHILE IT WAS WILLING TO INCORPORATE SOME OF THE TERMS OF ITS MAY 4TH OFFER, THE COMPANY WAS NOT PREPARED TO INCORPORATE ALL THOSE TERMS BECAUSE OF THE FACT THAT CONDITIONS HAD CHANGED SINCE ITS OFFER OF MAY 4TH. IT WAS THE COMPANY'S POSITION THAT SINCE A GREAT NUMBER OF NEW EMPLOYEES HAD BEEN HIRED, CERTAIN TERMS AND CONDITIONS CONTAINED IN THE COLLECTIVE AGREEMENT WHICH HAD EXPIRED, AND WHICH WOULD HAVE BEEN INCORPORATED INTO A NEW COLLECTIVE AGREEMENT ON MAY 4TH, WOULD HAVE TO BE AMENDED. SUCH TERMS AS SENIORITY, UNION SECURITY, AND THE RETROACTIVE PAY WHICH HAD BEEN OFFERED ON MAY 4TH WERE NOT NOW ACCEPTABLE FROM THE COMPANY'S POINT OF VIEW. WHILE THE COMPANY HAD PAID RETROACTIVE PAY UP TO MAY 16TH TO EMPLOYEES RETURNING TO WORK, IT WAS NOT WILLING TO ENTER INTO A COLLECTIVE AGREEMENT WHICH PROVIDED FOR THE PAYMENT OF RETROACTIVE PAY AS OF MAY 16TH. THE RESPONDENT CEASED PAYING RETROACTIVE PAY TO STRIKING EMPLOYEES WHO RETURNED TO WORK SUBSEQUENT TO MAY 16TH. THE RESPONDENT, HOWEVER, MADE CERTAIN PROPOSALS TO THE APPLICANT INCLUDING AN AGREEMENT TO TAKE BACK THE BALANCE OF THE STRIKING EMPLOYEES AS POSITIONS BECAME AVAILABLE BY REASON OF INCREASED PRODUCTION OR EXISTING POSITIONS WERE VACATED BY THE NEW EMPLOYEES. THE COMPANY WAS NOT WILLING TO DISCHARGE THE NEW EMPLOYEES IN ORDER TO TAKE BACK STRIKING EMPLOYEES.

12. SINCE THE RESPONDENT WAS NOT PREPARED TO APPLY ALL THE TERMS AND CONDITIONS SET FORTH IN ITS PROPOSALS OF MAY 4TH, THE APPLICANT BROUGHT THIS APPLICATION FOR CONSENT TO PROSECUTE. THE APPLICANT ARGUED THAT BECAUSE THE RESPONDENT IMPLEMENTED ALL THE TERMS AND CONDITIONS SET OUT IN ITS PROPOSALS OF MAY 4TH, IT FAILED TO BARGAIN IN GOOD FAITH WHEN IT REFUSED TO ENTER INTO A COLLECTIVE AGREEMENT WITH THE APPLICANT WHICH WOULD CONTAIN SUCH TERMS AND CONDITIONS.

13. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT AFTER MAY 8TH, 1967, WHEN THE RESPONDENT REOPENED ITS PLANT AND HIRED NEW EMPLOYEES, THERE WAS A SUBSTANTIAL CHANGE IN CONDITIONS WHICH PERMITTED THE COMPANY TO REFUSE IN GOOD FAITH TO ENTER INTO A COLLECTIVE AGREEMENT CONTAINING ALL THE TERMS AND CONDITIONS OFFERED ON MAY 4TH, WHICH WOULD BE BY WAY OF AMENDMENT TO THE "PRIOR COLLECTIVE AGREEMENT". THE SENIORITY AND CHECK-OFF PROVISIONS CONTAINED IN THE PRIOR COLLECTIVE AGREEMENT WOULD HAVE AN ADVERSE EFFECT UPON THE STATUS OF THE NEW EMPLOYEES HIRED AND THIS WAS A VALID CONSIDERATION FOR THE COMPANY TO

TAKE IN REFUSING TO ENTER INTO A COLLECTIVE AGREEMENT AS IT WAS PREPARED TO DO ON MAY 4TH. IT IS TO BE NOTED THAT EVEN AFTER THE COMPANY'S OPERATIONS COMMENCED, THE PARTIES MET WITH THE CONCILIATION OFFICER ON MAY 16TH AND ON THAT DATE CONTINUED TO BARGAIN. ON MAY 16TH, THE COMPANY MADE CERTAIN CONCRETE PROPOSALS. SINCE CONDITIONS HAD CHANGED WHICH MATERIALLY AFFECTED THE COMPANY'S PROPOSALS OF MAY 4TH, ALL TERMS AND CONDITIONS CONTINUED TO BE BARGAINABLE ISSUES. WHILE THE COMPANY REFUSED TO ENTER INTO A COLLECTIVE AGREEMENT THEREBY COMMITTING ITSELF TO RETROACTIVE PAYMENTS, THIS WAS NOT THE ONLY ISSUE STANDING IN THE WAY OF A COLLECTIVE AGREEMENT. ONCE A MATERIAL CHANGE IN CONDITIONS TAKES PLACE FOLLOWING A PROPOSAL BY EITHER PARTY, IT IS OPEN TO THE PARTY MAKING THE PROPOSAL TO WITHDRAW SUCH PROPOSAL WITHOUT BEING GUILTY OF BARGAINING IN BAD FAITH.

14. ON THE EVIDENCE BEFORE US, WE FIND THAT THE COMPANY WAS PREPARED TO ENTER INTO A COLLECTIVE AGREEMENT WITH THE UNION UP TO MAY 7TH CONTAINING ALL THE TERMS AND CONDITIONS OFFERED BY THE COMPANY ON MAY 4TH. HOWEVER, WHEN IT BECAME APPARENT TO THE COMPANY THAT THE EMPLOYEES HAD VOTED TO REJECT ITS OFFER, THE COMPANY BY ITS LETTER OF MAY 7TH, SET OUT ABOVE, TREATED THE OFFER AS HAVING BEEN WITHDRAWN, BECAUSE IT VIEWED ITS EFFORTS TO NEGOTIATE THE COLLECTIVE AGREEMENT AS UNSUCCESSFUL. ONCE THE COMPANY TOOK THE STEP OF OFFERING THE TERMS AND CONDITIONS TO EMPLOYEES ON AN INDIVIDUAL BASIS, AS IT WAS PERMITTED TO DO UNDER SECTION 59(1) OF THE ACT, IT CEASED TO BE AN OFFER FOR A COLLECTIVE AGREEMENT AND BECAME AN OFFER FOR INDIVIDUAL CONTRACTS OF EMPLOYMENT. WHILE DIFFERENT CONSIDERATIONS MIGHT BE APPLICABLE IF THE UNION ACCEPTANCE HAD COME PRIOR TO THE EMPLOYMENT OF NEW EMPLOYEES, THE FACT IS THAT ITS ACCEPTANCE ONLY CAME WHEN IT BECAME APPARENT THAT THE COMPANY HAD SUCCESSFULLY REOPENED ITS PLANT AND THE NUMBER OF EMPLOYEES WAS CONTINUALLY INCREASING. THE EMPLOYMENT OF NEW EMPLOYEES ALTERED CONDITIONS TO THE EXTENT THAT IT WAS OPEN TO THE RESPONDENT TO REFUSE TO ENTER INTO A COLLECTIVE AGREEMENT WITH THE APPLICANT WITHOUT GIVING THE APPLICANT ANY FORMAL NOTICE THAT THEIR ORIGINAL OFFER WAS REJECTED. SINCE THE RESPONDENT CONTINUED TO BARGAIN WITH THE APPLICANT AND APPARENTLY WAS PREPARED TO ENTER INTO A COLLECTIVE AGREEMENT WITH THE APPLICANT, ON TERMS CONSISTENT WITH THE CHANGED CONDITIONS, IT CANNOT BE SAID THAT THE APPLICANT HAS FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

15. THE APPLICATION OF THE APPLICANT IS THEREFORE DISMISSED.

13133-67-U: UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 514 (APPLICANT) v. SCM (CANADA) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: LAURENCE C. ARNOLD AND ROSS RUSSELL FOR THE APPLICANT, PURDY CRAWFORD, RON ELLIS AND H. J. BOWERS FOR THE RESPONDENT.



DECISION OF THE BOARD:

JULY 25, 1967.

1. THE APPLICANT HAS APPLIED FOR CONSENT TO PROSECUTE THE RESPONDENT AND HAS ALLEGED THAT THE RESPONDENT HAS CONTRAVENED SECTION 51(1) OF THE LABOUR RELATIONS ACT.
2. THE FACTS UPON WHICH THE APPLICANT RELIED MAY BE BRIEFLY STATED AS FOLLOWS. THE APPLICANT AND THE RESPONDENT HAVE A COLLECTIVE BARGAINING RELATIONSHIP WHICH EXTENDS OVER A TWENTY YEAR PERIOD. FOLLOWING UNSUCCESSFUL NEGOTIATIONS FOR A RENEWAL OF A COLLECTIVE AGREEMENT BETWEEN THE PARTIES AND HAVING EXHAUSTED THE CONCILIATION PROCESSES, THE APPLICANT COMMENCED A LAWFUL STRIKE AGAINST THE RESPONDENT AT METROPOLITAN TORONTO ON MARCH 8TH, 1967, AND THE RESPONDENT'S OPERATIONS AT THE STRUCK PLANT CAME TO A HALT.
3. IN APRIL 1967, THE RESPONDENT INITIATED FURTHER BARGAINING WHICH PROVED UNSUCCESSFUL AND ON MAY 7TH, 1967, THE RESPONDENT ANNOUNCED ITS INTENTION TO ATTEMPT TO REOPEN ITS PLANT AND TO APPLY THE WORKING CONDITIONS AND PAY THE WAGES AS SET OUT IN THE TERMS OF ITS LAST OFFER TO THE APPLICANT UNION. ON MAY 8TH, 1967, THE RESPONDENT REOPENED ITS PLANT AND DURING THE WEEK OF MAY 8TH A NUMBER OF THE STRIKING EMPLOYEES RETURNED TO WORK, NEW EMPLOYEES WERE HIRED AND THE RESPONDENT WAS ABLE TO COMMENCE PRODUCTION.
4. THE APPLICANT ARGUED THAT THE RESPONDENT CONTRAVENED SECTION 51(1) OF THE ACT WHEN THE RESPONDENT ENTERED INTO CONTRACTS OF EMPLOYMENT WITH THE EMPLOYEES WHO HAD BEEN ON STRIKE AND WITH NEW EMPLOYEES, SINCE THE CONTRACTS OF EMPLOYMENT WERE IN DIFFERENT TERMS THAN THE WORKING CONDITIONS WHICH WERE IN EXISTENCE AT THE COMMENCEMENT OF THE STRIKE. THE APPLICANT ARGUED THAT THE EMPLOYMENT CONTRACTS OFFERED TO THE EMPLOYEES CONSTITUTED "BARGAINING" AND THEREFORE FALL WITHIN THE PROHIBITION OF SECTION 51(1) OF THE ACT.
5. IN SUPPORT OF ITS ARGUMENT, THE APPLICANT REFERRED THE BOARD TO SECTION 51(1) OF THE ACT AND EMPHASIZED THOSE WORDS OF THAT SECTION WHICH ARE HEREINAFTER UNDERLINED:

NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL, SO LONG AS A TRADE UNION CONTINUES TO BE ENTITLED TO REPRESENT THE EMPLOYEES IN A BARGAINING UNIT, BARGAIN WITH OR ENTER INTO A COLLECTIVE AGREEMENT WITH ANY PERSON OR ANOTHER TRADE UNION OR A COUNCIL OF TRADE UNIONS ON BEHALF OF OR PURPORTING, DESIGNED OR INTENDED TO BE BINDING UPON THE EMPLOYEES IN THE BARGAINING UNIT OR ANY OF THEM.
6. WHILE SECTION 51(1), IF READ IN ISOLATION, IS OPEN TO THE INTERPRETATION WHICH THE APPLICANT HAS URGED THE BOARD TO PLACE ON IT, HOWEVER,

THAT SECTION MUST BE READ WITH AND IN THE CONTEXT OF THE LABOUR RELATIONS ACT AS A WHOLE.

7. SECTION 59(1)(A) OF THE ACT READS:

WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,

- (A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,
  - (I) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR
  - (II) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE;

8. SINCE THE APPLICANT WAS ENGAGED IN A LAWFUL STRIKE AT THE TIME OF THE EVENTS COMPLAINED OF, ALL THE TIME LIMITATIONS SET OUT IN SECTION 59(1)(A) HAD BEEN SATISFIED. ACCORDINGLY, THE RESPONDENT WAS FREE TO ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT WITHOUT THE CONSENT OF THE TRADE UNION. SINCE THE PROVISIONS OF SECTION 59(1)(A) EXPRESSLY CONTEMPLATE AN EMPLOYER DOING WHAT THE RESPONDENT DID IN THIS CASE, IT THEREFORE LOGICALLY FOLLOWS THAT THE INTERPRETATION PLACED ON SECTION 51(1) BY THE APPLICANT, WHICH THE APPLICANT HAS URGED THE BOARD TO ADOPT, IS NOT THE CORRECT ONE. WHILE WE ARE OF THE VIEW THAT THE PROHIBITION IMPOSED BY SECTION 51(1) APPLIES DURING THE TERM OF OPERATION OF A COLLECTIVE AGREEMENT BETWEEN THE PARTIES AND WHILE THE PROVISIONS OF SECTION 51(1) ALSO APPLY DURING THAT PERIOD WHEN THE PARTIES ARE ATTEMPTING TO NEGOTIATE A COLLECTIVE AGREEMENT OR THE RENEWAL OF A COLLECTIVE AGREEMENT, HOWEVER, WHEN THE BARGAINING PROCESS HAS REACHED THE STAGE WHEN THE TIME LIMITATIONS PRESCRIBED BY SECTION 59(1) (A) HAVE ELAPSED, THE PROHIBITION IMPOSED BY SECTION 51(1) CEASES TO APPLY. ONCE THE TIME LIMITATIONS IMPOSED BY SECTION 59(1)(A) HAVE ELAPSED, AN EMPLOYER MAY ALTER RATES OF WAGES OR ANY TERM OR CONDITION OF EMPLOYMENT WITHOUT CONTRAVENING THE PROSCRIPTION AGAINST BARGAINING WITH HIS EMPLOYEES AS SET OUT IN SECTION 51(1) OF THE ACT.

9. IN ARRIVING AT ITS DECISION IN THIS MATTER, THE BOARD NOTES THAT IN AN APPLICATION BY SOME OF THE STRIKING EMPLOYEES REPRESENTED BY THE APPLICANT, WHEREIN THE SUPREME COURT OF ONTARIO WAS REQUESTED TO ENJOIN THE RESPONDENT COMPANY FROM ENGAGING IN THE ACTIVITIES WHICH THE APPLICANT ALLEGED WERE CONTRARY TO SECTION 51(1), KING J. STATES, IN PART, AS FOLLOWS:

IN MY OPINION THE PROVISIONS OF THE LABOUR RELATIONS ACT R.S.O. 1960 CHAPTER 202 AS AMENDED (AND IN PARTICULAR SECTION 51 (1) THEREOF) DO NOT ENTITLE THE DEFENDANTS TO THE INJUNCTION ASKED FOR HEREIN, AND THE MOTION IS DISMISSED WITH COSTS TO THE PLAINTIFF IN THE CAUSE.

(SEE DECISION OF KING J., DATED JUNE 22ND, 1967, SCM (CANADA) LIMITED V. GWENDOLINE MOTLEY, ET. AL.)

10. THIS MATTER WAS DEALT WITH BY LOCKE J. IN CANADIAN PACIFIC RAILWAY COMPANY V. ZAMBRI 62 C.L.L.C. ¶15,407 AT P. 451, WHEREIN HE STATED:

WHEN EMPLOYERS HAVE ENDEAVOURED TO COME TO AN AGREEMENT WITH THEIR EMPLOYEES AND FOLLOWED THE PROCEDURE SPECIFIED BY THE LABOUR RELATIONS ACT, THEY ARE AT COMPLETE LIBERTY IF A STRIKE THEN TAKES PLACE TO ENGAGE OTHERS TO FILL THE PLACES OF THE STRIKERS.

FOR THE REASONS SET OUT ABOVE, THE BOARD, IN THE EXERCISE OF ITS DISCRETION, DENIES THE APPLICANT'S REQUEST FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT, AND THE APPLICATION IS ACCORDINGLY DISMISSED.

13211-67-U: IROQUOIS HOTEL LONDON LTD. (APPLICANT) V. LONDON MUSICIANS UNION, LOCAL 279 OF THE AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: B. A. THOMAS FOR THE APPLICANT,  
MERVIN BURGARD FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 19, 1967.

1. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 12 OF THE LABOUR RELATIONS ACT, IN THAT ON AND AFTER MAY 6TH, 1967, THE RESPONDENT DID FAIL TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 59(1) OF THE LABOUR RELATIONS ACT, IN THAT FOLLOWING NOTICE GIVEN UNDER SECTION 40 OF THE ACT AND DURING A TIME WHICH NO COLLECTIVE AGREEMENT WAS IN OPERATION, THE RESPONDENT DID CONTRAVENE SECTION 59(1) OF THE LABOUR RELATIONS ACT, IN THAT ON AND AFTER MAY 6TH, 1967, THE RESPONDENT ALTERED CERTAIN PRIVILEGES OF THE APPLICANT BEFORE THE TIME LIMITATIONS SET OUT IN SECTION 59(1) HAD ELAPSED.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENTS - SECTION 65

12911-66-U: THE CANADIAN UNION OF SHIPBUILDING & MARINE WORKERS (C.N.T.U.) (COMPLAINANT) V. COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING & ENGINEERING LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: IAN SCOTT AND PETER CURTIS FOR THE  
COMPLAINANT, B. H. STEWART AND GORDON BRANIFF FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 5, 1967.

1. THE COMPLAINANT HAS ALLEGED THAT THE FIVE AGGRIEVED PERSONS HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT IN THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY THEM BECAUSE THEY WERE MEMBERS OF THE COMPLAINANT UNION (HEREINAFTER REFERRED TO AS CNTU).

2. THE RESPONDENT, BY WAY OF PRELIMINARY OBJECTION, TOOK THE POSITION THAT THE BOARD SHOULD NOT ENTERTAIN THIS COMPLAINT BY REASON OF THE FACT THAT THE COMPLAINT AND THE RELIEF SOUGHT SHOULD BE ADJUDICATED BY A BOARD OF ARBITRATION CONSTITUTED PURSUANT TO THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 6320 OF THE UNITED STEELWORKERS OF AMERICA.



3. THE UNITED STEELWORKERS OF AMERICA, ALTHOUGH SERVED WITH NOTICE OF THE HEARING IN THIS MATTER, DID NOT APPEAR AND PARTICIPATE IN THE HEARING.

4. FOR THE PURPOSE OF DEALING WITH THE RESPONDENT'S PRELIMINARY OBJECTION, THE PARTIES AGREED TO THE FOLLOWING FACTS. A COLLECTIVE AGREEMENT COVERING THE AGGRIEVED PERSONS WAS IN EFFECT AT ALL RELEVANT TIMES BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA, LOCAL 6320. ON MARCH 15TH, 1967, GRIEVANCES WERE SUBMITTED BY EACH OF THE AGGRIEVED PERSONS PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT ABOVE REFERRED TO. THE GRIEVANCES SUBMITTED BY THE AGGRIEVED PERSONS HAVE PROCEEDED TO ARBITRATION AND A BOARD OF ARBITRATION HAS BEEN CONSTITUTED COMPRISED OF PROFESSOR PALMER AS CHAIRMAN, DWIGHT STOREY AS THE NOMINEE OF THE UNITED STEELWORKERS OF AMERICA, LOCAL 6320, AND ROBERT WILLIAMSON AS THE NOMINEE OF THE RESPONDENT COMPANY. AT ALL RELEVANT TIMES THE COMPLAINANT CNTU WAS ENGAGED IN AN ORGANIZING CAMPAIGN DESIGNED TO REPLACE THE UNITED STEELWORKERS OF AMERICA, LOCAL 6320 AS BARGAINING AGENT FOR THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT REFERRED TO ABOVE. THE FIVE AGGRIEVED PERSONS WERE ALL MEMBERS OF CNTU AND IN EACH CASE WERE PROMINENT ORGANIZERS ON BEHALF OF CNTU. SOME OF THE AGGRIEVED PERSONS WERE OFFICERS OF THE CNTU LOCAL DURING THE RELEVANT PERIOD. THE UNITED STEELWORKERS OF AMERICA, LOCAL 6320 HAD (UNKNOWN TO THE COMPANY) TOOK PUNITIVE ACTION AGAINST CERTAIN OF THE FIVE AGGRIEVED PERSONS BY EFFECTING THEIR REMOVAL AS STEWARDS OF LOCAL 6320 BECAUSE OF THEIR MEMBERSHIP IN AND SUPPORT OF CNTU. IMMEDIATELY AFTER THE CNTU MEMBERS WHO HAD BEEN UNION STEWARDS OF LOCAL 6320 LOST THEIR CAPACITY AS UNION STEWARDS, THIS FACT BECAME KNOWN TO EMPLOYEES IN THE RESPONDENT'S WELDING DEPARTMENT AND ON THE SAME DAY AS THE AGGRIEVED PERSONS WERE REMOVED FROM THEIR POSITIONS OF STEWARDS, SOME 150 PERSONS IN THE RESPONDENT'S WELDING DEPARTMENT ENGAGED IN A WALK-OUT. WHILE THE COMPANY PERMITTED MOST OF THE 150 EMPLOYEES TO RETURN TO WORK IN THE WELDING DEPARTMENT FOLLOWING THE WALK-OUT, THE COMPANY REFUSED TO PERMIT THE FIVE AGGRIEVED PERSONS TO RETURN TO WORK. THE COMPANY TOOK THE POSITION THAT THE FIVE AGGRIEVED PERSONS HAD TERMINATED THEIR EMPLOYMENT.

5. AS STATED EARLIER, THE COMPLAINANT NOW COMPLAINS THAT THE FIVE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE ACT FOLLOWING THE EVENTS OUTLINED ABOVE BECAUSE OF THEIR MEMBERSHIP IN CNTU. THE RESPONDENT ARGUED THAT THE DISMISSAL OF THE FIVE AGGRIEVED PERSONS SHOULD BE DEALT WITH BY THE BOARD OF ARBITRATION WHICH HAS BEEN CONSTITUTED.

6. IT WAS THE RESPONDENT'S POSITION THAT THE COLLECTIVE AGREEMENT WHICH WAS BINDING UPON THE AGGRIEVED PERSONS PRECLUDED THE BOARD FROM ENTERTAINING THIS COMPLAINT, PURSUANT TO THE PRINCIPLE ESTABLISHED IN THE NATIONAL SHOWCASE COMPANY LIMITED CASE, 61 C.L.L.C. 901, THE RELEVANT PORTION OF WHICH READS AS FOLLOWS:

IT SEEMS TO US, THEREFORE, IN DETERMINING WHETHER WE SHOULD EXERCISE OUR DISCRETION UNDER SECTION 57, SUBSECTION 4, IT IS PROPER TO TAKE

INTO ACCOUNT THE FACT THAT AN ALTERNATE REMEDY EXISTS. IN ADDITION, WHEN THIS REMEDY IS ONE WHICH THE PARTIES THEMSELVES HAVE AGREED TO AND, FURTHER, INVOLVES A PROCEDURE UNDER WHICH THE PARTIES AGREE TO ATTEMPT TO SETTLE THE DISPUTE THEMSELVES BEFORE BRINGING IN AN OUTSIDER, THAT IS AN ARBITRATOR, WE HAVE NO HESITATION IN SAYING THAT WE OUGHT NOT TO PROCEED FURTHER UNDER SECTION 57, SUBSECTION 4. (NOW 65(4)).

WHILE IN THE SPECIAL CIRCUMSTANCES OF A PARTICULAR CASE WE MIGHT WELL BE PERSUADED TO TAKE THE CONTRARY VIEW, IN ALL THE CIRCUMSTANCES OF THIS CASE WE CAN FIND NO REASON TO DEPART FROM THE GENERAL PRINCIPLE ENUNCIATED ABOVE.

7. THE RESPONDENT FURTHER ARGUED THAT EVEN IF THE BOARD WERE TO ASSUME THAT THERE WERE SPECIAL CIRCUMSTANCES IN THE INSTANT CASE, THE AGGRIEVED PERSONS, HAVING SELECTED ANOTHER ALTERNATE REMEDY, ARE NOW PRECLUDED FROM CHOOSING THE REMEDY PROVIDED BY SECTION 65 OF THE ACT. THE RESPONDENT POINTED OUT THAT SHOULD THIS BOARD AND THE ARBITRATION BOARD COME TO DIFFERENT AND CONFLICTING CONCLUSIONS, IT WOULD LEAD TO AN INIQUITOUS RESULT SINCE BOTH THE DECISION OF THIS BOARD AND THE AWARD OF THE ARBITRATION BOARD CAN BE REGISTERED AND ENFORCED IN THE SUPREME COURT OF ONTARIO.

8. IN ADDITION TO THE NATIONAL SHOWCASE COMPANY LIMITED CASE REFERRED TO ABOVE, SOME OF THE CASES ON WHICH THE RESPONDENT RELIED IN SUPPORT OF ITS POSITION ARE THE SCARBORO BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 822; THE GENERAL BAKERIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 824; IRVING OIL COMPANY LIMITED CASE, 62 C.L.L.C. ¶16,248; GROTTOLE V. LOCK & SON LTD. CASE, 63 C.L.L.C. ¶15,460; CANADIAN CAR AND FOUNDRY CO. LTD. V. DINHAM CASE, 60 C.L.L.C. ¶15,267; AND HOOGENDOORN V. GREENING METAL PRODUCTS CASE, 67 C.L.L.C. ¶14,017.

9. THE COMPLAINANT ARGUED THAT EVEN IF THE BOARD WERE TO ASSUME THAT THE UNITED STEELWORKERS OF AMERICA WOULD BE "GOD-LIKE" IN THE PRESENTATION OF THE ARBITRATION CASE, WHICH ON THE SURFACE WOULD APPEAR TO BE CONTRARY TO THEIR BEST INTERESTS, THERE ARE SPECIAL CIRCUMSTANCES IN THIS CASE WHICH DISTINGUISHES THIS CASE FROM THE CASES ON WHICH THE RESPONDENT RELIED. THE COMPLAINANT ARGUED THAT SINCE IT WAS NOT A PARTY TO THE COLLECTIVE AGREEMENT NO REMEDY WAS AVAILABLE TO IT UNDER THE COLLECTIVE AGREEMENT AND CNTU IS NOT A PARTY TO THE ARBITRATION PROCEEDINGS. IN ADDITION, THE COMPLAINANT ARGUED THAT THE RELIEF AVAILABLE TO THE AGGRIEVED PERSONS BEFORE THE ARBITRATION BOARD IS LIMITED TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN LOCAL 6320 AND THE RESPONDENT.

10. CNTU IS A PARTY TO THE PROCEEDINGS IN THIS CASE IN A REPRESENTATIVE CAPACITY. THE RIGHTS OF CNTU IN PROCEEDINGS BEFORE THIS BOARD UNDER SECTION 65 ARE NO LESS NOR ARE THEY ANY GREATER THAN THE RIGHTS OF THE INDIVIDUAL AGGRIEVED PERSONS WHOM CNTU REPRESENTS.

11. THERE HAS BEEN NO ALLEGATION THAT THE UNITED STEELWORKERS OF AMERICA HAVE ENGAGED IN COLLUSION OR CONNIVANCE WITH THE RESPONDENT WITH RESPECT TO THE ACTIONS TAKEN BY THE RESPONDENT. IT MUST BE REMEMBERED THAT THE INDIVIDUAL GRIEVORS EACH SIGNED A GRIEVANCE WHICH RESULTED IN THE ARBITRATION PROCEEDINGS WHICH ARE PENDING. THE AGGRIEVED PERSONS CONTINUE TO BE REPRESENTED BY THE UNITED STEELWORKERS OF AMERICA WHICH IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT, WHICH PROVIDES IN PART THAT SHOULD "DIFFERENCES OR DISPUTES ARISE BETWEEN THE COMPANY OR ANY OFFICIAL OF THE COMPANY AND ANY EMPLOYEE OR GROUP OF EMPLOYEES REGARDING THE INTERPRETATION OR APPLICATION OF THIS AGREEMENT OR FOR ANY OTHER CAUSE", SUCH DIFFERENCES OR DISPUTES SHOULD BE SETTLED BY THE GRIEVANCE OR ARBITRATION PROCEDURES PROVIDED IN THE COLLECTIVE AGREEMENT. THE PARTIES TO THE COLLECTIVE AGREEMENT ARE CURRENTLY PROCESSING THE DISPUTE WITH RESPECT TO THE AGGRIEVED PERSONS IN ACCORDANCE WITH THE PROVISIONS OF THE COLLECTIVE AGREEMENT. THIS PROCEDURE IS NOT ONLY AUTHORIZED BY THE COLLECTIVE AGREEMENT BUT IS IN ACCORDANCE WITH THE EXPRESSED INTENT OF THE LABOUR RELATIONS ACT UNDER WHICH THE UNITED STEELWORKERS OF AMERICA IS RECOGNIZED AS THE SOLE AND EXCLUSIVE BARGAINING AGENT OF THE PERSONS COVERED BY THE COLLECTIVE AGREEMENT.

12. THE FACT THAT CNTU IS NOT A PARTY TO THE ARBITRATION PROCEEDINGS IS NOT A MATTER WITH WHICH THIS BOARD CAN BE CONCERNED. AS STATED IN RE HOOGENDOORN V. GREENING METAL PRODUCTS AND SCREENING COMPANY ET AL 1967 1 O.R. 712 AT 728, "AN AWARD GIVEN IN PURSUANCE OF ARBITRATION PROVISIONS OF A COLLECTIVE AGREEMENT IS NOT OPEN TO ATTACK MERELY BECAUSE INTERESTS ADVERSE TO THE GRIEVING UNION, OTHER THAN THE EMPLOYER, WERE NOT REPRESENTED."

13. WE RECOGNIZE THAT, IN VIEW OF THE ALLEGATIONS MADE BY THE COMPLAINANT ON BEHALF OF THE AGGRIEVED PERSONS, THE UNITED STEELWORKERS OF AMERICA MAY FIND THEMSELVES IN A MOST UNENVIABLE POSITION IN THE ARBITRATION PROCEEDINGS. THE UNITED STEELWORKERS OF AMERICA MAY BE SUBJECT TO THE ACCUSATION THAT THEY DID NOT LEND THEIR FULL SUPPORT TO THE AGGRIEVED PERSONS IN THE ARBITRATION PROCEEDINGS UNLESS THE RESULT IS COMPLETELY FAVOURABLE TO THE GRIEVORS. ALTHOUGH INVITED TO DO SO, THIS BOARD IS NOT PREPARED TO ASSUME THAT THE UNITED STEELWORKERS OF AMERICA WILL FAIL TO FAIRLY PROMOTE THE INTERESTS OF THE AGGRIEVED PERSONS IN THE ARBITRATION PROCEEDINGS. THIS BOARD IS ALSO NOT PREPARED TO ASSUME THAT THE ARBITRATION BOARD WILL NOT MAKE ITS AWARD IN ACCORDANCE WITH THE PRINCIPLES OF NATURAL JUSTICE. THE LABOUR RELATIONS BOARD IS NOT EMPOWERED TO SIT IN APPEAL ON THE ARBITRATION BOARD NOR IS IT FITTING THAT IT SHOULD IN ANY WAY IMPUGN THE COMPOSITION OF THE ARBITRATION BOARD OR ANY DECISION OF THE ARBITRATION BOARD. IT WOULD BE EVEN MORE REPREHENSIBLE FOR THIS BOARD TO DO SO PRIOR TO THE ARBITRATION BOARD HEARING THE MATTER AND ARRIVING AT ITS DECISION.

14. IF THE UNITED STEELWORKERS OF AMERICA DOES NOT PRESS THE ARBITRATION PROCEEDINGS TO A CONCLUSION, OR IF IT CAN BE ESTABLISHED THAT THERE HAS BEEN A BREACH OF DUTY OF GOOD FAITH REPRESENTATION BY THE UNITED STEELWORKERS OF AMERICA IN THE ARBITRATION PROCEEDINGS, OR IF THE ARBITRATION BOARD FINDS ON THE EVIDENCE THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THE MATTER, AS THE COMPLAINANT SUGGESTS MAY HAPPEN,



THEN IN SUCH CIRCUMSTANCE, THIS BOARD MAY (ALTHOUGH WE HAVE NOT SO DECIDED) ENTERTAIN THIS COMPLAINT PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE ACT. HOWEVER, UNTIL SUCH TIME AS THE ABOVE EVENTS OR EVENTS OF A SIMILAR NATURE HAVE TAKEN PLACE THE COMPLAINT BY THE COMPLAINANT IS UNTIMELY AND CANNOT BE ENTERTAINED.

15. AS STATED IN THE GENERAL BAKERIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 919, "THE FACT THAT SOMETHING MAY OR MAY NOT HAPPEN IN THE FUTURE IS NOT A REASON IN OUR VIEW" FOR ENTERTAINING A COMPLAINT UNDER SECTION 65 OF THE ACT WHICH HAS BEEN REFERRED TO ARBITRATION.

16. FOR THE ABOVE REASONS, THIS COMPLAINT IS ACCORDINGLY DISMISSED.

12950-67-U: WILLIAM EWING (COMPLAINANT) V. CRUSH BEVERAGES LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: ANDRE BEKERMANN FOR THE COMPLAINANT,  
N. H. PRESTON AND H. HAINA FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER  
E. BOYER: JULY 10, 1967.

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2. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT, WILLIAM EWING, ALLEGES THAT HE WAS DISCHARGED ON MARCH 30TH, 1967 BY HORST HAINA, THE PLANT SUPERINTENDENT, BECAUSE OF HIS MEMBERSHIP IN THE CANADIAN UNION OF OPERATING ENGINEERS, IN CONTRAVENTION OF SECTIONS 48 AND 50(A) OF THE LABOUR RELATIONS ACT.

3. EWING, WHO IS A FOURTH CLASS STATIONARY ENGINEER, WAS HIRED BY THE RESPONDENT IN THAT CAPACITY ON OR ABOUT JANUARY 23RD. DURING HIS PERIOD OF EMPLOYMENT WITH THE RESPONDENT, IN ADDITION TO GEORGE HALLETT, THE CHIEF ENGINEER, THERE WAS A SECOND FULL-TIME STATIONARY ENGINEER, WILLIAM MONK, AND A PART-TIME STATIONARY ENGINEER WORKING IN THE BOILER ROOM. THE STATIONARY ENGINEERS WORKED ON A WEEKLY ROTATING THREE SHIFT BASIS. THE MORNING SHIFT IS FROM 7:00 A.M. TO 3:00 P.M., THE AFTERNOON SHIFT FROM 3:00 P.M. TO 11:00 P.M., AND THE NIGHT SHIFT FROM 11:00 P.M. TO 7:00 A.M. AMONG HIS REGULAR DUTIES IN THE BOILER ROOM, THE STATIONARY ENGINEER ON THE AFTERNOON SHIFT IS REQUIRED TO WASH THE BACK FILTERS AROUND 5:00 P.M. AFTER THE PRODUCTION OPERATIONS IN THE PLANT CLOSED DOWN. THE STATIONARY ENGINEER ON THE NIGHT SHIFT HAS THE RESPONSIBILITY OF STARTING THE WARMER IN THE BOILER ROOM AN HOUR PRIOR TO THE COMMENCEMENT OF THE PLANT OPERATIONS AT 7:00 A.M.

4. THE STATIONARY ENGINEER ON DUTY ON THE AFTERNOON AND NIGHT SHIFT ALSO HAS CERTAIN RESPONSIBILITIES CONCERNING THE SECURITY OF THE PLANT. MORE PARTICULARLY, THE ENGINEER ON THE AFTERNOON SHIFT HAS TO ENSURE THAT THE DOORS LEADING TO THE PLANT AND OFFICE ARE LOCKED AFTER THE PRODUCTION AND OFFICE EMPLOYEES DEPART EACH EVENING. THE ENGINEER



ON THE NIGHT SHIFT HAD SIMILAR DUTIES AND IN PARTICULAR IS EXPECTED TO CHECK TO SEE THAT THE DOOR TO THE OFFICE WAS LOCKED AFTER THE CLEANING STAFF (WHICH GENERALLY WORKS FROM APPROXIMATELY 9:00 P.M. TO 11:30 P.M.) LEAVES THE OFFICE. THE NIGHT ENGINEER ALSO IS RESPONSIBLE FOR UNLOCKING THE PLANT ENTRANCE AND TURNING ON THE LIGHTS PRIOR TO THE ARRIVAL OF THE PLANT EMPLOYEES AT 7:00 A.M.

5. THE EVIDENCE OF HAINA IS THAT DURING EWING'S TEN WEEKS OF EMPLOYMENT WITH THE RESPONDENT, HE (HAINA) RECEIVED A NUMBER OF COMPLAINTS CONCERNING EWING FROM MEMBERS OF THE RESPONDENT'S SUPERVISORY STAFF. MORE PARTICULARLY, HAINA TESTIFIED THAT ON A NUMBER OF OCCASIONS MAUREEN THOMPSON, THE QUALITY CONTROL TECHNICIAN, REPORTED THAT EWING HAD NOT PROPERLY WASHED THE BACK FILTERS. ACCORDING TO HAINA SHE ALSO REPORTED THAT ONE MORNING SHE FOUND THE PLANT DOOR LOCKED AND HAD TO AWAIT THE ARRIVAL OF HALLETT TO GAIN ENTRANCE. FURTHER, ON THAT OCCASION SHE FOUND EWING SITTING AT HAINA'S DESK WITH HIS HEAD RESTING ON HIS ARMS. HAINA ALSO TESTIFIED THAT HALLETT REPORTED TO HIM THAT ONE MORNING WHEN HE ARRIVED AT THE PLANT, THE DOOR WAS STILL LOCKED, THE LIGHTS WERE NOT TURNED ON, AND THE WARMER HAD NOT BEEN STARTED. ON THAT OCCASION HE ENCOUNTERED EWING COMING FROM THE MEN'S LUNCH ROOM. HAINA'S EVIDENCE IS THAT MONK ONCE REPORTED TO HIM THAT HE (MONK) HAD FOUND THE DOOR TO THE OFFICE UNLOCKED WHEN HE CAME ON THE MORNING SHIFT TO REPLACE EWING. AS WELL, ACCORDING TO HAINA, DE FRIETAS, THE OFFICE CLERK, AND TURNER, THE SHIPPER, TOLD HIM THAT WHEN THEY CAME TO THE PLANT ONE MORNING ABOUT 5:30 A.M. TO TAKE STOCK, THE PLANT DOOR WAS LOCKED, THE LIGHTS WERE OUT AND EWING TOOK SOME TIME TO COME TO THE DOOR. HAINA TESTIFIED THAT ONE EVENING WHEN HE CAME TO THE PLANT AT ABOUT 8:15 P.M. WHEN EWING WAS ON DUTY, HE FOUND THE DOOR BETWEEN THE PLANT AND THE OFFICE UNLOCKED AND ON THAT OCCASION SPOKE TO BOTH EWING AND THE NIGHT CLEANER ABOUT SECURITY IN THE PLANT. HAINA FURTHER TESTIFIED THAT ON THE NIGHT OF MARCH 28TH HE RECEIVED A TELEPHONE CALL FROM A PERSON WHO IDENTIFIED HIMSELF AS "BILL" ADVISING HIM THAT THE DOOR LEADING TO THE OFFICE WAS LOCKED AND THAT ACCORDINGLY THE CLEANERS COULD NOT GET IN. HAINA STATED THAT HE TOLD THE PERSON ON THE TELEPHONE THAT IF THERE WAS NO KEY TO THE OFFICE IN THE BOILER ROOM TO TELL THE CLEANERS TO FORGET ABOUT CLEANING THE OFFICE THAT NIGHT. HAINA'S EVIDENCE IS THAT WHEN HE ARRIVED AT THE OFFICE THE FOLLOWING MORNING HE FOUND THAT THE DOOR BETWEEN THE WASHROOM AND THE OFFICE OBVIOUSLY HAD BEEN FORCED OPEN AND THE DOOR FRAME HAD BEEN BROKEN.

6. EWING, FOR HIS PART, ADMITTED THAT HE WAS LATE ABOUT THREE TIMES. HE ALSO TESTIFIED THAT ON ONE OCCASION HALLETT HAD TOLD HIM TO SPEND MORE TIME WASHING THE BACK FILTERS. HIS EVIDENCE, HOWEVER, IS THAT HE OTHERWISE PERFORMED THE DUTIES ASSIGNED TO HIM AND HE DENIED ANY CONVERSATION CONCERNING SECURITY IN THE PLANT OR ANY OTHER MATTERS WITH HAINA PRIOR TO HIS DISCHARGE ON THE MORNING OF MARCH 30TH.

7. HAINA TESTIFIED THAT HE WAS IN THE OFFICE ON THE MORNING OF MARCH 30TH AT APPROXIMATELY 4:00 A.M. TO TAKE STOCK. HIS EVIDENCE IS THAT WHEN HALLETT ARRIVED AT THE PLANT AT ABOUT 6:00 A.M., HE (HAINA) ASKED HALLETT IF HE HAD ANYTHING AGAINST EWING'S DISMISSAL TO WHICH HALLETT REPLIED IN THE NEGATIVE. ACCORDING TO HAINA, HALLETT SAID HE COULD GET ALONG FOR A WEEK WITHOUT EWING. HAINA'S EVIDENCE IS THAT HE INSTRUCTED HALLETT TO SEND EWING TO HIS OFFICE. EWING TESTIFIED THAT AT ABOUT 6:30 A.M. HALLETT CAME TO HIM AND SAID THAT HE HAD HEARD FROM MONK THAT EWING HAD JOINED THE UNION AND THAT IF THAT WAS SO HE WOULD NOT BE AROUND LONG AS THAT WAS THE RULE OF THE COMPANY. ACCORDING TO EWING, HALLETT THEN TOLD HIM TO GO TO HAINA'S OFFICE.

8. EWING TESTIFIED THAT WHEN HE ATTENDED AT HAINA'S OFFICE THAT MORNING, HAINA INFORMED HIM THAT HE WAS DISCHARGED, EFFECTIVE IMMEDIATELY. EWING'S EVIDENCE IS THAT HE ASKED IF IT WAS BECAUSE OF THE UNION TO WHICH HAINA GAVE A NEGATIVE REPLY. ACCORDING TO EWING, WHEN HE THEN ASKED WHY HE WAS BEING DISCHARGED, HAINA TOLD HIM IT WAS BECAUSE OF THE DOOR THAT HAD BEEN BROKEN ON THE NIGHT OF MARCH 25TH. EWING'S TESTIMONY IS THAT HE ONLY LEARNED OF THE BROKEN DOOR THAT MORNING. HAINA'S ACCOUNT OF THEIR CONVERSATION IS THAT WHEN EWING CAME TO HIS OFFICE HE (EWING) STATED THAT THERE WERE RUMOURS OF A UNION COMING INTO THE BOILER ROOM. HAINA'S EVIDENCE IS THAT HE COULD NOT RECALL HIS OWN REPLY TO THAT REMARK, BUT THAT HE THEN INFORMED EWING OF HIS DISCHARGE. ACCORDING TO HAINA, EWING ASKED FOR THE REASON, TO WHICH HAINA REPLIED THAT IT WAS BECAUSE HE HAD BEEN CAUGHT SLEEPING ON THE JOB, HE FAILED TO CHECK THAT THE DOORS WERE LOCKED AND BECAUSE HE HAD BEEN ON DUTY WHEN THE DOOR BETWEEN THE WASHROOM AND THE OFFICE WAS BROKEN.

9. WE WOULD FIRST POINT OUT THAT NO MEMBERS OF THE SUPERVISORY STAFF, WHO ACCORDING TO HAINA'S EVIDENCE REPORTED EWING'S MISDEEDS, WERE CALLED TO GIVE EVIDENCE TO SUBSTANTIATE THE INCIDENTS CONCERNED. HOWEVER, EVEN IF WE WERE TO ACCEPT HAINA'S EVIDENCE REGARDING THE REPORTS MADE TO HIM AS INDICATING SHORTCOMINGS IN EWING'S JOB PERFORMANCE, THE CONCLUSION REACHED BY EWING, PARTICULARLY BASED ON THE REPORTS OF HALLETT, DE FRIETAS AND TURNER THAT EWING WAS SLEEPING ON THE JOB, IN OUR VIEW, WAS BASED ON A TENUOUS FOUNDATION. FURTHER, WHILE HAINA ADMITS THAT HE DID NOT KNOW WHO BROKE THE DOOR ON MARCH 25TH, OR EVEN WHETHER EWING WAS ON DUTY AT THE TIME, AND MADE NO EFFORT TO INVESTIGATE THE MATTER, IT IS CLEAR FROM HAINA'S EVIDENCE THAT HE NEVERTHELESS HELD EWING RESPONSIBLE FOR THE INCIDENT.

10. WE COME NOW TO A CONSIDERATION OF EWING'S EVIDENCE CONCERNING HIS CONVERSATION WITH HALLETT ON THE MORNING OF MARCH 30TH, JUST PRIOR TO HIS DISCHARGE BY HAINA. WE WOULD FIRST MENTION THAT THE EVIDENCE IS THAT EWING JOINED THE CANADIAN UNION OF OPERATING ENGINEERS ON MARCH 27TH. ACCORDING TO THE EVIDENCE OF EWING, WHICH THE RESPONDENT MADE NO EFFORT TO REFUTE, HALLETT TOLD HIM THAT HE KNEW FROM WILLIAM MONK, THE OTHER FULL-TIME STATIONARY ENGINEER, THAT EWING HAD JOINED THE UNION. HALLETT, IN EFFECT, WENT ON TO SAY THAT THE PENALTY EXACTED BY THE RESPONDENT FOR SUCH A STEP WOULD BE DISCHARGE. ON THE EVIDENCE IT IS CLEAR THAT HALLETT WAS PART OF THE SUPERVISORY STAFF AND THAT HAINA LOOKED TO HIM TO REPORT ON THE ACTIVITIES OF THE EMPLOYEES UNDER HIS SUPERVISION. THERE IS ALSO HAINA'S EVIDENCE THAT HE SPOKE TO HALLETT ABOUT EWING JUST PRIOR TO EWING'S DISCHARGE. IN THESE CIRCUMSTANCES, AND DESPITE HAINA'S EVIDENCE TO THE CONTRARY, WE ARE IMPELLED TO CONCLUDE THAT HAINA KNEW OF EWING'S RECENT MEMBERSHIP IN THE UNION AT THE TIME OF HIS DISCHARGE. WE FIND IT SIGNIFICANT IN THE CIRCUMSTANCES THAT MONK, WHO ACCORDING TO THE EVIDENCE OF CARMEN COLE, THE PRESIDENT OF LOCAL 101 OF THE CANADIAN UNION OF OPERATING ENGINEERS, HAD BEEN A MEMBER OF THE UNION FOR A CONSIDERABLE NUMBER OF YEARS, SUBMITTED HIS RESIGNATION FROM THE UNION AROUND THE SAME TIME THAT EWING WAS DISCHARGED.

11. WHILE IT MAY BE THAT EWING, IN FACT, WAS NOT A SATISFACTORY EMPLOYEE, HAVING REGARD TO ALL THE EVIDENCE, AND PARTICULARLY THE UNDISPUTED EVIDENCE OF HALLETT'S STATEMENT TO EWING JUST PRIOR TO HIS DISCHARGE, THE BOARD IS SATISFIED THAT HAINA WAS PROMPTED TO DISCHARGE EWING ON THE MORNING OF MARCH 30TH BECAUSE HE HAD LEARNED OF HIS MEMBERSHIP IN THE UNION AND WAS INTENT ON PREVENTING UNION ORGANIZATION AMONG THE STATIONARY ENGINEERS IN THE RESPONDENT'S PLANT. WE ACCORDINGLY FIND THAT WILLIAM EWING WAS DISCHARGED BY THE RESPONDENT BECAUSE OF HIS MEMBERSHIP IN THE CANADIAN UNION OF OPERATING ENGINEERS, IN CONTRAVENTION OF SECTIONS 48 AND 50(A) OF THE LABOUR RELATIONS ACT.

12. THE COMPLAINANT TESTIFIED THAT HE WAS NOT REQUESTING RE-INSTATEMENT TO HIS FORMER EMPLOYMENT WITH THE RESPONDENT. ACCORDINGLY, OUR DETERMINATION AS TO THE ACTION TO BE TAKEN BY THE RESPONDENT IS THAT AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS THE RESPONDENT SHALL FORTHWITH PAY TO WILLIAM EWING THE SUM OF \$1000.00.

DECISION OF BOARD MEMBER F. W. MURRAY:

JULY 10, 1967.

I DISSENT.

I WOULD HAVE ACCEPTED THE EVIDENCE OF MR. H. HAINA THE PLANT SUPERVISOR, PARTICULARLY WITH RESPECT TO THAT TESTIMONY CONCERNING HIS DECISION TO DISCHARGE THE COMPLAINANT PRIOR TO MARCH 30, 1967.

I WAS NOT IMPRESSED WITH THE TESTIMONY OF THE COMPLAINANT, PARTICULARLY HIS FIRST EVIDENCE TO THE EFFECT THAT DURING HIS EMPLOYMENT WITH THE RESPONDENT (SHORT AS IT WAS) HE HAD HAD NO DIFFICULTY NOR HAD RECEIVED ANY COMPLAINTS ABOUT HIS WORK. HE LATER ADMITTED, WHEN CONFRONTED WITH CONFLICTING TESTIMONY, THAT HE HAD RECEIVED COMPLAINTS ABOUT HIS WORK.

I WOULD NOT FIND THAT THE RESPONDENT ACTED IN CONTRAVENTION OF SECTION 48 AND 50(A) OF THE LABOUR RELATIONS ACT AND I WOULD HAVE DISMISSED THE COMPLAINT.

13090-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. INDALEX LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: LORNE INGLE AND OTTO URBANOVICS FOR THE COMPLAINANT, N. L. MATHEWS, Q.C., J. D. MACKLEM AND D. THISTLE FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: JULY 27, 1967.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS FRANK SPROVIERIO AND LJUBOMIR POZAIC HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT ON MAY 5TH, 1967, STEPHEN OLETIC, THE PLANT SUPERINTENDENT OF THE RESPONDENT, DISCHARGED THE AGGRIEVED PERSONS BECAUSE OF THEIR ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION.

3. THE COMPLAINANT WAS CERTIFIED AS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT ON JULY 29TH, 1964. SPROVIERIO WAS PRESIDENT OF THE LOCAL UNION IN THE PLANT AND WAS ON THE UNION NEGOTIATING COMMITTEE. THE PARTIES WENT THROUGH CONCILIATION AND ON MARCH 24TH, 1965, A BOARD OF CONCILIATION REPORTED TO THE MINISTER THAT NO AGREEMENT HAD BEEN REACHED. ACCORDING TO THE EVIDENCE OF SPROVIERIO THE RESPONDENT MADE CERTAIN PROMISES TO THE EMPLOYEES CONCERNING WAGES AND FRINGE BENEFITS AT THAT TIME AND THAT NO STRIKE ACTION TOOK PLACE. ALTHOUGH THERE IS NO DIRECT EVIDENCE ON THE POINT IT WOULD APPEAR THAT THE RESPONDENT HAD UNDERTAKEN TO PAY THE SAME WAGE RATES AND GIVE THE SAME FRINGE BENEFITS TO ITS EMPLOYEES AND WERE NEGOTIATED BY THE COMPLAINANT WITH THE KAISER ALUMINUM COMPANY LIMITED. IN ANY EVENT IT SEEMS THAT NO ACTION WAS TAKEN BY THE COMPLAINANT UNION FROM THE SPRING OF 1965 TO APRIL OF THIS YEAR ON BEHALF OF THE EMPLOYEES OF THE RESPONDENT. THE EVIDENCE IS, HOWEVER, THAT NO PROCEEDINGS WERE INSTITUTED DURING THIS PERIOD TO TERMINATE THE BARGAINING RIGHTS OF THE COMPLAINANT UNION.

4. THE EVIDENCE IS THAT PRIOR TO THE BEGINNING OF THE NIGHT SHIFT ON APRIL 26TH, 1967, THE EMPLOYEES GOING ON THAT SHIFT GATHERED IN FRONT OF THE PLANT OFFICE AND INFORMED OLETIC THAT THEY WANTED TO SPEAK TO THISTLE, THE PLANT MANAGER, ABOUT WORKING CONDITIONS. ACCORDING TO OLETIC, THISTLE DECLINED TO SEE THE MEN ON THAT OCCASION, BUT AGREED TO MEET WITH THEIR LEADERS THE FOLLOWING MORNING PROVIDED THEY SET OUT THEIR DEMANDS IN WRITING. OLETIC CONVEYED THIS INFORMATION TO THE EMPLOYEES.

5. SPROVIERIO'S EVIDENCE IS THAT HE ARRANGED TO HAVE THE EMPLOYEES' DEMANDS SET OUT IN A LETTER, WHICH WAS FILED AS AN EXHIBIT. ACCORDING TO THE LETTER, THE EMPLOYEES WERE REQUESTING AN IMMEDIATE 25¢ AN HOUR RAISE IMMEDIATELY AND A 10¢ AN HOUR RAISE EVERY SIX MONTHS FOR THE NEXT THREE YEARS. THE EMPLOYEES ALSO REQUESTED THAT THE RESPONDENT PAY THE FULL PREMIUMS FOR ONTARIO HOSPITAL SERVICES AND A GROUP INSURANCE PLAN, RATHER THAN THE FIFTY PER CENT WHICH THE RESPONDENT HAD BEEN PAYING. THE LETTER ALSO STATED THAT THE MANAGEMENT THREE YEARS PREVIOUSLY HAD PROMISED TO PAY THE EMPLOYEES THE SAME WAGES AS UNION SHOPS BUT HAD FAILED TO MEET THIS COMMITMENT.

6. THE FOLLOWING MORNING, APRIL 27TH, SPROVIERIO, POZAIC AND AN EMPLOYEE NAMED SUSIE MET WITH OLETIC AND THISTLE. THISTLE REJECTED THE EMPLOYEES MONETARY DEMANDS. HE TOLD THEM THAT THE RESPONDENT WAS IN A POOR FINANCIAL CONDITION AND THAT BOTH THE QUANTITY AND QUALITY OF PRODUCTION HAD TO IMPROVE. THISTLE FURTHER INFORMED THE EMPLOYEES THAT



HE KNEW HOW TO ACCOMPLISH THESE IMPROVEMENTS WITH EVEN REDUCED STAFF AND THAT HE WAS GOING TO SHOW THEM HOW. (IN FACT, ACCORDING TO THE EVIDENCE, THISTLE NEVER DID SO). SPROVIERIO INFORMED THISTLE AND OLETIC THAT IF THE EMPLOYEES' DEMANDS WERE NOT MET THE EMPLOYEES WOULD WALK OFF THE JOB AT 6:00 P.M. THAT NIGHT. THISTLE UNDERTOOK TO TAKE UP THE EMPLOYEES' DEMANDS WITH JOHN MACKLEM, THE GENERAL MANAGER OF THE RESPONDENT'S PLANTS IN ONTARIO. BOTH THISTLE AND MACKLEM HAD ONLY BEEN IN THEIR POSITIONS WITH THE RESPONDENT SINCE MARCH OF THIS YEAR, ALTHOUGH MACKLEM HAD PREVIOUSLY BEEN SALES MANAGER.

7. THE MANAGEMENT OF THE COMPANY HAD A MEETING AT NOON ON THAT DAY CONCERNING THE EMPLOYEES' DEMANDS. PRIOR TO THE COMMENCEMENT OF THE NIGHT SHIFT OLETIC AND THISTLE AGAIN MET WITH SPROVIERIO, POZAIC AND FIVE OTHER EMPLOYEES. ON THAT OCCASION, THISTLE ADMITTED THAT SOME OF THE WAGE RATES BEING PAID TO EMPLOYEES WERE LOWER THAN THOSE BEING PAID UNDER THE COLLECTIVE AGREEMENT AFFECTING THE EMPLOYEES OF KAISER ALUMINUM COMPANY LIMITED AND THAT THE FOLLOWING WEEK THE MATTER WOULD BE RECTIFIED. THISTLE FURTHER INFORMED THEM THAT THE RESPONDENT WAS PREPARED TO PAY EIGHTY AS OPPOSED TO FIFTY PER CENT OF THE ONTARIO HOSPITAL SERVICES AND GROUP INSURANCE PLAN PREMIUMS. THISTLE SAID THAT THIS, HOWEVER, WAS THE LIMIT TO WHICH THE RESPONDENT WAS PREPARED TO GO TO MEET THE EMPLOYEES' DEMANDS. SPROVIERIO'S EVIDENCE IS THAT THE RESPONDENT'S OFFER DID NOT SATISFY THE EMPLOYEES.

8. ON APRIL 29TH, 1967 THERE WAS A MEETING OF FORTY-SEVEN OF THE RESPONDENT'S EMPLOYEES AT THE COMPLAINANT'S UNION HALL. ALTHOUGH, AS INDICATED ABOVE, THE COMPLAINANT WOULD STILL APPEAR TO HAVE BEEN THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT, FOR REASONS WHICH WERE NOT EXPLAINED AT THE HEARING, AT THIS MEETING THE COMPLAINANT PROCEEDED ONCE MORE TO ORGANIZE THE EMPLOYEES AND SIGN THEM INTO MEMBERSHIP IN THE UNION. SPROVIERIO AND POZAIC SAT AT THE HEAD TABLE AT THIS MEETING ALONG WITH TWO UNION ORGANIZERS. SPROVIERIO ACTED AS INTERPRETER FOR THE ITALIAN SPEAKING EMPLOYEES AND POZAIC FULFILLED THE SAME FUNCTION FOR THE SERBIAN SPEAKING EMPLOYEES. ACCORDING TO POZAIC HE PERSONALLY SIGNED FOUR OR FIVE EMPLOYEES INTO MEMBERSHIP ON THAT OCCASION. AN APPLICATION FOR CERTIFICATION WAS IN FACT FILED WITH THE BOARD BY THE COMPLAINANT UNION ON MAY 5TH. NOTICE OF THE APPLICATION WAS RECEIVED BY THE RESPONDENT ON MAY 8TH. THE BOARD WAS ADVISED BY COUNSEL FOR THE RESPONDENT AT THE HEARING THAT THE RESPONDENT ADOPTED THE POSITION THAT THE APPLICATION WAS UNTIMELY AS THE COMPLAINANT ALREADY HELD THE BARGAINING RIGHTS FOR THE RESPONDENT'S EMPLOYEES AND THAT THE APPLICATION WAS SUBSEQUENTLY WITHDRAWN.

9. THE RESPONDENT ALLEGES THAT BOTH SPROVIERIO AND POZAIC WERE DISCHARGED ON MAY 5TH BECAUSE OF DEFICIENCIES IN THE PERFORMANCE OF THEIR JOBS AND IN PARTICULAR BECAUSE OF CERTAIN INCIDENTS WHICH WILL BE REFERRED TO SUBSEQUENTLY. BOTH SPROVIERIO AND POZAIC HAD BEEN IN THE EMPLOY OF THE RESPONDENT FOR SOME FIVE OR SIX YEARS AND FOR A NUMBER OF THOSE YEARS, PRIOR TO THEIR DISCHARGE, BOTH HAD BEEN LEAD HANDS IN CHARGE OF CREWS OF SEVEN OR SO EMPLOYEES WHO OPERATED THE TWO PRESSES USED IN THE MANUFACTURE OF THE RESPONDENT'S ALUMINUM PRODUCTS. THE RESPONDENT OPERATED ON A TWO SHIFT BASIS. THE DAY SHIFT WORKED FROM 6:00 A.M. TO 6:00 P.M. AND THE NIGHT SHIFT WORKED FROM 6:00 P.M. TO 6:00 A.M. THERE

ARE NO FOREMEN IN THE EMPLOY OF THE RESPONDENT. ACCORDINGLY, ON THE NIGHT SHIFT, THE TWO LEAD HANDS ARE IN CHARGE OF THE OPERATION.

10. WITHOUT RELATING THE FULL DETAILS, THE EVIDENCE IS THAT ON APRIL 26TH THISTLE FOUND POZAIC USING "COLD" DIES WHICH RESULTS IN THE PROCESSED MATERIAL NOT BEING PROPERLY TEMPERED. ON THISTLE'S INSTRUCTIONS, OLETIC SPOKE TO POZAIC ABOUT HIS USING DIES WHICH WERE NOT HEATED TO THE PROPER TEMPERATURE. POZAIC'S EVIDENCE RELATING TO THIS INCIDENT IS SOMEWHAT UNCLEAR WHICH WOULD SEEM TO BE ATTRIBUTABLE IN SOME MEASURE TO THE LIMITATION ON HIS USAGE OF THE ENGLISH LANGUAGE.

11. ON THE NIGHT SHIFT COMMENCING ON MAY 4TH, AT APPROXIMATELY 11:15 A.M. ON MAY 5TH, THE "PIN" ON THE STRETCHER BEING USED BY POZAIC'S CREW BROKE, CAUSING THE PRESS TO BE SHUT DOWN. ACCORDING TO POZAIC, HE, HIS PRESS OPERATOR AND A MAINTENANCE MAN PROCEEDED TO MAKE REPAIRS. IT APPEARS FROM THE PRODUCTION RECORDS THAT THE STRETCHER WAS NOT IN OPERATION FOR A PERIOD OF TWO AND A HALF HOURS, ALTHOUGH POZAIC ESTIMATED A SOMEWHAT SHORTER PERIOD. ACCORDING TO POZAIC, WHILE THE STRETCHER WAS BEING REPAIRED HE ASSIGNED TWO OF HIS CREW TO WORK ON THE OTHER PRESS WHICH WAS SHORT TWO MEN. THREE OTHER CREW MEMBERS WERE ASSIGNED TO THE JOB OF CUTTING AND PACKING MATERIAL AND THE LAST CREW MEMBER WAS ASSIGNED TO CLEANING THE PRESS. POZAIC'S EVIDENCE IS THAT HIS CREW MEMBERS PERFORMED THE JOBS WHICH HE ASSIGNED TO THEM DURING ALL OF THE PERIOD THE STRETCHER WAS OUT OF COMMISSION AND THAT THEY RETURNED TO THEIR REGULAR JOBS ON THE PRESS WHEN THE STRETCHER WAS REPAIRED. OLETIC'S EVIDENCE IS THAT HE HAD TOLD POZAIC A DAY EARLIER THAT CERTAIN ALUMINUM TUBING HAD TO BE STRETCHED. HE TESTIFIED THAT SINCE THERE WAS IN FACT A STRETCHER FOR THIS PURPOSE AVAILABLE, POZAIC SHOULD HAVE ASSIGNED HIS CREW TO THAT WORK DURING THE PERIOD THAT THE OTHER STRETCHER WAS SHUT DOWN. POZAIC DENIED THAT HE HAD RECEIVED SUCH INSTRUCTIONS FROM OLETIC.

12. THE EVIDENCE CONCERNING SPROVIERIO IS THAT ON MARCH 20TH HE USED THE WRONG ALLOY WITH THE RESULT THAT A CONSIDERABLE AMOUNT OF MATERIAL HAD TO BE SCRAPPED, CAUSING A FINANCIAL LOSS OF SOME HUNDREDS OF DOLLARS TO THE RESPONDENT. SPROVIERIO, ALTHOUGH ADMITTING THE WRONG ALLOY WAS USED, TESTIFIED THAT HE ORDERED THE RIGHT ALLOY BUT FAILED TO CHECK TO MAKE SURE THE CORRECT ONE WAS DELIVERED PRIOR TO ITS USE.

13. THERE IS EVIDENCE ALSO THAT SPROVIERIO WAS RESPONSIBLE ON APRIL 22ND FOR CERTAIN ALUMINUM PRODUCTS BEING PRODUCED WHICH HAD "DIE LINES" ON THEM, WHICH RESULTED IN THEM HAVING TO BE SCRAPPED. SPROVIERIO'S EVIDENCE IS THAT THE RUN WAS STARTED BY THE LEAD HAND ON THE PREVIOUS SHIFT AND THAT HE JUST TOOK OVER THE OPERATION AFTER IT WAS IN PRODUCTION. HE TESTIFIED, MOREOVER, THAT HE WAS FOUR MEN SHORT ON HIS CREW THAT SHIFT AND ACCORDINGLY COULD NOT CONTROL THE WHOLE OPERATION. SPROVIERIO STATED THAT HE REPORTED HIS DIFFICULTIES, DUE TO THE ABSENTEE CREW MEMBERS, TO OLETIC ON THAT OCCASION. OLETIC DENIES THIS LATTER STATEMENT. ACCORDING TO OLETIC AND THISTLE, DESPITE SPROVIERIO'S ADDED RESPONSIBILITIES BECAUSE OF THE UNDERSTAFFED CREW, HIS FIRST RESPONSIBILITY WAS TO CHECK THE PRODUCT BEING PROCESSED FOR FLAWS AND THIS HE FAILED TO DO.

14. ON MAY 5TH, OLETIC CALLED BOTH POZAIC AND SPROVIERIO TO HIS OFFICE SEPARATELY. HE INFORMED POZAIC THAT HE WAS BEING DISCHARGED BECAUSE OF THE FACT THAT HE DID NOT ASSIGN HIS CREW TO STRETCH THE ALUMINUM TUBING AS INSTRUCTED DURING THE PERIOD WHEN THE STRETCHER WAS CLOSED DOWN THE PREVIOUS NIGHT. ACCORDING TO SPROVIERIO, OLETIC ADVISED HIM THAT HE (SPROVIERIO) WAS BEING DISCHARGED BECAUSE HE WAS TOO SLOW IN CHANGING DIES THAT MORNING. THERE IS NO EVIDENCE BY OLETIC AS TO THE REASON HE GAVE TO SPROVIERIO FOR HIS DISCHARGE.

15. ALTHOUGH THE EVIDENCE OF THE WITNESSES CALLED BY THE RESPONDENT IS THAT PRODUCTION STANDARDS IN THE PLANT WERE LOW, THERE IS NO EVIDENCE TO SUGGEST THAT POZAIC AND SPROVIERIO DURING THEIR LONG TENURE WITH THE RESPONDENT AND IN THE PERFORMANCE OF THEIR DUTIES AS LEAD HANDS WERE NOT SATISFACTORY EMPLOYEES PRIOR TO THE INCIDENTS IN MARCH, APRIL AND MAY OF THIS YEAR RELATED ABOVE. IF, IN FACT, THE INCIDENTS RELATING TO SPROVIERIO ON MARCH 20TH AND APRIL 22ND WHICH NECESSITATED THE MATERIAL IN QUESTION TO BE SCRAPPED JUSTIFIED HIS DISCHARGE, WE FAIL TO UNDERSTAND WHY SUCH ACTION WAS NOT TAKEN IMMEDIATELY AFTER APRIL 22ND INCIDENT RATHER THAN WAITING UNTIL MAY 5TH. IT WAS SUGGESTED AT THE HEARING THAT SINCE BOTH MACKLEM AND THISTLE WERE NEW IN THEIR JOBS THEY LOGICALLY WOULD NOT WANT TO TAKE ANY PRECIPITOUS ACTION. IF THAT IN FACT WAS THE CASE REGARDING SPROVIERIO, THE SAME REASONING HARDLY APPLIES IN THE CASE OF THE DISCHARGE OF POZAIC, WHICH WAS DONE WITH GREAT DISPATCH. IT WAS ALSO SUGGESTED THAT THE RESPONDENT DELAYED TAKING ANY ACTION REGARDING SPROVIERIO IN ORDER TO GIVE THEM TIME TO FIND A REPLACEMENT. THE FACT IS, HOWEVER, THAT WHEN BOTH SPROVIERIO AND POZAIC WERE DISCHARGED ON MAY 5TH, THEY WERE IMMEDIATELY REPLACED BY PRESS OPERATORS ON THEIR CREWS. FURTHER, ALTHOUGH OLETIC, THISTLE AND MACKLEM ALL MAINTAINED THAT SPROVIERIO WAS DISCHARGED BECAUSE OF THE INCIDENTS ON MARCH 20TH AND APRIL 22ND, NECESSITATING THE SCRAPPING OF MATERIAL, THE EVIDENCE OF SPROVIERIO, WHICH WAS NOT DENIED, IS THAT HE WAS ADVISED THAT THE REASON HE WAS BEING DISCHARGED WAS BECAUSE HE TOOK TOO LONG TO CHANGE DIES ON THE MORNING OF MAY 5TH.

16. IN THE CASE OF POZAIC, EVEN IF WE ACCEPT AS FACT THAT INSTRUCTIONS WERE GIVEN TO HIM CONCERNING THE STRETCHING OF THE TUBE ALUMINUM, WE ARE SATISFIED ON THE EVIDENCE THAT HE AT LEAST TOOK STEPS TO GAINFULLY UTILIZE HIS CREW DURING THE BREAKDOWN OF THE STRETCHER. WHILE WE ARE NOT CALLED UPON TO JUDGE WHETHER THE PENALTY OF DISCHARGE EXACTED BY THE RESPONDENT WAS FAIR, EXCEPT AS IT ASSISTS US IN DETERMINING THE ISSUE BEFORE US, IT SEEMS AN UNUSUALLY HARSH PENALTY IN THE CIRCUMSTANCES. WE WOULD ADD ALSO THAT, ACCORDING TO THE EVIDENCE, NO MENTION OF THE INCIDENT ON APRIL 26TH CONCERNING THE "COLD DIES" WAS MADE TO POZAIC AS BEING A CONSIDERATION BY THE RESPONDENT IN ARRIVING AT ITS DECISION TO DISCHARGE HIM.

17. MACKLEM IN HIS TESTIMONY ADMITTED THAT BEING A SMALL PLANT HE KNEW WHICH EMPLOYEES WERE SUPPORTERS OF THE UNION AS THE EMPLOYEES EXPRESSED THEIR OPINIONS. IT IS ALSO CLEAR FROM HIS EVIDENCE THAT HE KNEW OR ASSUMED THAT THE EMPLOYEES WHO ACTED AS LEADERS IN MAKING DEMANDS ON THE COMPANY ON APRIL 27TH WERE ACTIVE SUPPORTERS OF THE UNION. MOST

PROMINENT AMONG THESE LEADERS WERE POZAIC AND SPROVIERIO. MACKLEM WAS AS WELL APPRAISED OF THE FACT THAT SPROVIERIO HAD BEEN, AND FOR THAT MATTER STILL WAS, PRESIDENT OF THE COMPLAINANT UNION IN THE PLANT. WHILE THE MEMBERS OF MANAGEMENT WHO TESTIFIED AT THE HEARING DENIED ANY KNOWLEDGE OF THE UNION MEETING ON APRIL 29TH WHICH WAS ATTENDED BY A SUBSTANTIAL PERCENTAGE OF THE RESPONDENT'S WORK FORCE, IN LIGHT OF THE EVIDENCE OF MANAGEMENT'S GENERAL KNOWLEDGE CONCERNING THE UNION AND THE SYMPATHIES OF THE EMPLOYEES AS REVEALED BY THE EVIDENCE, IT IS REASONABLE TO INFER THAT THE RESPONDENT WOULD HAVE SOME AWARENESS OF THE RENEWED UNION ACTIVITY IN THE PLANT, PARTICULARLY FOLLOWING AS IT DID THE REJECTION BY THE COMPANY OF MOST OF THE EMPLOYEES' PROPOSALS. THERE IS ALSO THE UNDISPUTED EVIDENCE OF ISADOR PAKOR THAT AT A MEETING OF EMPLOYEES ON MAY 8TH, WHEN AN EMPLOYEE ASKED IF SPROVIERIO AND POZAIC WOULD BE RE-EMPLOYED, MACKLEM STATED THAT THEY WOULD NOT BE COMING BACK BECAUSE THEY WERE "TROUBLE-MAKERS". THIS STATEMENT IS HARDLY COMPATIBLE WITH THE EXPLANATION GIVEN BY MACKLEM AND OTHER MEMBERS OF MANAGEMENT AT THE HEARING AS TO THE REASON FOR THE DISCHARGE OF SPROVIERIO AND POZAIC.

18. ON ALL THE EVIDENCE WE ARE OF THE OPINION THAT THE RESPONDENT WAS AWARE OF THE RENEWED ACTIVITY OF THE COMPLAINANT UNION IN THE PLANT AND RECOGNIZED POZAIC AND SPROVIERIO AS BEING THE LEADERS AMONG THE EMPLOYEES IN THAT RENEWED ACTIVITY. IN OUR VIEW, THE RESPONDENT DISCHARGED BOTH POZAIC AND SPROVIERIO IN AN EFFORT TO THWART ANY ATTEMPT BY THE COMPLAINANT UNION TO STRENGTHEN ITS POSITION IN THE PLANT AND TO SERVE AS A WARNING TO OTHER EMPLOYEES OF THE CONSEQUENCES OF SUPPORTING THE UNION.

19. IN ALL THE CIRCUMSTANCES AS REVEALED BY THE EVIDENCE AND AS STATED IN PARAGRAPH 1 OF THE BOARD'S DECISION OF JUNE 20TH, 1967, THE BOARD IS SATISFIED THAT SPROVIERIO AND POZAIC WERE DISCHARGED BY THE RESPONDENT BECAUSE OF THEIR UNION ACTIVITIES IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

20. THE BOARD'S DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS SET OUT IN PARAGRAPH 2 OF THE BOARD'S DECISION OF JUNE 20TH, 1967.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: JULY 27, 1967.

I DISSENT. UNDER THE CIRCUMSTANCES OF THIS CASE AND THE EVIDENCE PRESENTED THERETO, I WOULD HAVE DISMISSED THE APPLICATION.

IT IS NOT MY INTENTION TO REITERATE THE EVIDENCE WHICH HAS BEEN SUBSTANTIALLY SET FORTH IN THE MAJORITY JUDGMENT OF MY COLLEAGUES. I WOULD, HOWEVER, MAKE REFERENCE TO CERTAIN PORTIONS OF ADDITIONAL EVIDENCE WHICH WAS PRESENTED AT THE HEARING TOGETHER WITH CERTAIN CONCLUSIONS WHICH I TAKE THEREFROM.

THE EVIDENCE IS THAT IN THE MONTH OF MARCH, 1967, THE COMPANY WAS UNDERGOING SERIOUS ECONOMIC PROBLEMS BOTH FROM THE STANDPOINT OF



PRODUCTIVITY AND MARKETABILITY. PRODUCTIVITY WAS ONLY ABOUT FIFTY PER CENT OF THE NORM. REJECTS OF THE PRODUCT WERE ABNORMALLY HIGH, APPROXIMATING SIX AND ONE-HALF PER CENT, WHILE COMPETITORS WERE ONLY EXPERIENCING ONE TO ONE AND ONE-HALF PER CENT OF REJECTS. THE GENERAL MANAGER WAS DISCHARGED AND JOHN MACKLEM WAS APPOINTED TO THAT POSITION. THE SERVICES OF DAVID L. THISTLE WERE OBTAINED AND HE WAS APPOINTED TO THE POSITION OF PLANT MANAGER.

THESE TWO MEN JOINTLY SOUGHT TO FIND THE REASONS WHY THE COMPANY WAS OPERATING AT A LOSS FINANCIALLY, WHY PRODUCTIVITY WAS LOW AND REJECTS WERE HIGH. THE SERIOUS SITUATION IN THE PLANT WAS MADE MANIFESTLY EVIDENT TO STEPHEN OLETIC THE PLANT SUPERINTENDENT, WHO WAS TOLD THAT PRODUCTIVITY WAS TO BE RAISED AND REJECTS WERE TO BE STOPPED. INSTRUCTIONS WERE GIVEN AS TO THE PROCEDURES TO BE FOLLOWED WITH RESPECT TO THE RUNNING OF PRESSES AND THE FACT THAT UNDER NO CIRCUMSTANCES WERE COLD DIES TO BE USED.

THE COMPANY DOES NOT EMPLOY THE SERVICES OF FOREMEN AND CONSEQUENTLY THE LEAD HANDS ARE IN CHARGE OF THE EMPLOYEES ON PRODUCTION. THE ALLEGED AGGRIEVED ARE LEAD HANDS.

UPON MACKLEM COMMENCING HIS DUTIES AS GENERAL MANAGER, ALL LEAD HANDS WERE TOLD OF THE POOR FINANCIAL SITUATION OF THE COMPANY. THEY WERE TOLD THAT PRODUCTIVITY MUST BE IMPROVED AND REJECTS DECREASED. THEY WERE INSTRUCTED THAT THEY HAD THE RESPONSIBILITY TO FIND THE PERSONS WHO THROUGH CARELESSNESS AND INATTENTIVENESS WERE CAUSING THE COMPANY ITS PROBLEMS.

IT IS LITTLE WONDER THEN, THAT WHEN THE ALLEGED AGGRIEVED, THE VERY PERSONS IN WHOM THIS RESPONSIBILITY WAS PLACED, WERE THEMSELVES GUILTY OF THE VERY THINGS OF WHICH THE MANAGEMENT COMPLAINED, THE COMPANY SHOULD RESORT TO THE REPLACEMENT OF THESE MEN BY PERSONS WHO THOUGHT WOULD PERFORM THEIR DUTIES IN A MORE RESPONSIBLE MANNER. THAT MY COLLEAGUES FELT THAT THE PENALTY THAT WAS IMPOSED UPON THE ALLEGED AGGRIEVED WAS HARSH SHOULD BE OF NO CONCERN TO THIS TRIBUNAL IN DETERMINING THE RESULT OF THIS CASE.

I AM OF THE OPINION THAT THE APPROACH WHICH THE ALLEGED AGGRIEVED TOOK TO THEIR RESPONSIBILITIES, IS CLEARLY INDICATED IN THE EVIDENCE ADDUCED FROM STEPHEN OLETIC AT THE HEARING. OLETIC, IN WARNING POZAIK ABOUT THE USE OF COLD DIES TOLD HIM THAT HE (POZAIK) KNEW WHAT SHOULD BE DONE AND HOW IT SHOULD BE DONE. OLETIC TESTIFIED THAT POZAIK REPLIED IN WORDS TO THE EFFECT THAT "I AM DOING MY BEST AND IF YOU DON'T THINK I WORK HARD ENOUGH AND WELL ENOUGH, GIVE ME MY BOOK."

DURING THE LATTER MEETING OF APRIL 27TH, (AS SET OUT IN THE MAJORITY DECISION) THISTLE EXPLAINED TO THE MEN THAT THE COMPANY PRODUCTION WAS BAD AND THAT SOMETHING MUST BE DONE TO INCREASE PRODUCTION IN ORDER TO STAY IN BUSINESS. HE SUGGESTED THAT IMPROVEMENT COULD BE MADE AND WOULD BE MADE. SPROVIERIO IS THEN ALLEGED TO HAVE REPLIED, "IF YOU DON'T WANT ME TO WORK, I WON'T WORK." IN ANSWER THERETO, THISTLE SAID,

"WITH SUCH AN ATTITUDE, YOU SHOULD NOT WORK FOR THE COMPANY." POZAIK, AT THE SAME MEETING SAID HE WAS DOING HIS BEST AND HE COULD NOT DO BETTER. HE LATER ASKED OF THISTLE WHAT A PERSON SHOULD DO IN THIS COMPANY TO GET FIRED.

MAY I SAY THAT IF THESE STATEMENTS OF THE ALLEGED AGGRIEVED ARE INDICATIVE OF THEIR ATTITUDE TOWARDS THEIR RESPONSIBILITIES AS LEAD HANDS DIRECTING PRODUCTION EMPLOYEES, IT UNDERLIES THE REASON WHY THE COMPANY IS OPERATING AT A LOSS.

IN NEARLY ALL COMPLAINTS MADE BY A UNION UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, THE EVIDENCE PRESENTED BY THE UNION IS LARGELY OF A CIRCUMSTANTIAL NATURE. THIS EVIDENCE, ACCORDINGLY, SHOULD NOT BE VIEWED AS A CONCLUSIVE PRESUMPTION, BUT MERELY ONE THAT IS REBUTTABLE. IT IS ONLY EVIDENCE FROM WHICH WE MAY DRAW INFERENCES UNLESS AND UNTIL THE TRUTH OF SUCH INFERENCES ARE DISPROVED. THE ONUS UPON THE COMPLAINANT IS A HEAVY ONE AND IS ONE WHICH MUST BE FULL FILLED AND SATISFIED.

WITH RESPECT, IT IS MY OPINION THAT MATTERS OF DISCIPLINE AND ECONOMICS, AND THE EFFICACIOUS MANAGEMENT OF A CONCERN MUST BE EXAMINED BY THIS BOARD IN A MOST THOROUGH MANNER, WHETHER OR NOT THERE IS ANY SUGGESTION OF UNIONIZATION IN THE BACKGROUND. THE DIFFICULT QUESTION TO DECIDE IS WHETHER ALLEGED AGGRIEVED PERSONS WERE DISCHARGED FOR UNION ACTIVITY. THE BOARD MUST NEVER GRANT AN IMMUNITY TO EMPLOYEES DURING AN ORGANIZATIONAL CAMPAIGN WHICH PREVENTS MANAGEMENT FROM EXERCISING ITS RIGHTS OF DISCIPLINE AND LAY-OFF.

IN THE INSTANT CASE, COMPANY WITNESSES SWORE UNDER OATH THAT THEY KNEW NOTHING OF ANY UNION ORGANIZATIONAL CAMPAIGN OR OF ANY IMPLICATION OF THE ALLEGED AGGRIEVED THEREWITH.

I AM IMPRESSED WITH THEIR EVIDENCE, THE MANNER IN WHICH THEY GAVE SUCH EVIDENCE, AND THEIR DEMEANOUR IN THE WITNESS BOX. IN MY OPINION, THE COMPANY EVIDENCE COMPLETELY ANSWERED THE CIRCUMSTANTIAL EVIDENCE OF THE COMPLAINANT AND SUPPORTED FULLY THE POSITION OF THE COMPANY.

I AM NOT PREPARED TO DISREGARD SUCH COMPANY EVIDENCE. NEITHER AM I PREPARED TO FIND THAT SUCH EVIDENCE IS TO BE DISTRUSTED. I WOULD THEREFORE, WITHOUT HESITATION, HAVE DISMISSED THE APPLICATION.

13163-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. C. & M. PRODUCTS LTD. (RESPONDENT).

- AND -

13195-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. C. & M. PRODUCTS LTD. (RESPONDENT).

- AND -

13219-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. C. & M. PRODUCTS LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: LORNE INGLE AND F. RAO FOR THE COMPLAINANT;  
D. F. O. HERSEY AND ROBERT W. GORDON FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFE: JULY 12, 1967.

1. THIS COMPLAINT IS WITHDRAWN AT THE REQUEST OF THE COMPLAINANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD WITH RESPECT TO MARIA OTELLO, STANLEY SIMMONS AND HAROLD STRICKLAND.

2. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT AND HAS REQUESTED THAT THE RESPONDENT BE DIRECTED TO REINSTATE THE AGGRIEVED PERSONS IN THEIR EMPLOYMENT WITH FULL COMPENSATION FOR LOSS OF WAGES SUSTAINED BY THEM BY REASON OF THEIR LAY-OFF FROM THEIR EMPLOYMENT BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE ACT.

3. THE EVIDENCE ADDUCED BY THE COMPLAINANT ESTABLISHED THAT ALL THE AGGRIEVED PERSONS HAD BECOME MEMBERS OF THE COMPLAINANT DURING THE COURSE OF THE COMPLAINANT'S ORGANIZING CAMPAIGN. ON MAY 23RD, 1967, THE RESPONDENT WAS SERVED NOTICE OF THE APPLICATION FOR CERTIFICATION BY THE BOARD AND ON THAT DAY THE RESPONDENT LAID OFF A TOTAL OF TEN EMPLOYEES. ON THE FOLLOWING DAY, THE RESPONDENT LAID OFF AN ADDITIONAL SIXTEEN EMPLOYEES. IN ADDITION TO THE TWENTY-SIX PEOPLE WHO WERE LAID OFF ON MAY 23RD AND MAY 24TH, AN ADDITIONAL TEN PEOPLE HAD BEEN LAID OFF ON MAY 10TH, 1967. OF THE TOTAL OF THIRTY-SIX PERSONS LAID OFF ON MAY 10TH, MAY 23RD AND MAY 24TH, TWELVE PERSONS WERE RECALLED ON OR BEFORE JUNE 26TH, 1967.

4. ON MAY 23RD, GIOVANNI PREZIOSO, ONE OF THE AGGRIEVED PERSONS, WAS ADVISED BY HIS FOREMAN THAT HE WAS LAID OFF. MR. PREZIOSO APPROACHED MR. ARDINO DIONISI, AN ITALIAN-SPEAKING FOREMAN, AND ASKED THE REASON FOR THE LAY-OFF. MR. DIONISI INFORMED MR. PREZIOSO THAT HE WAS "SORRY, BUT YOU PEOPLE HAVE WANTED THIS YOURSELVES". WHEN MR. PREZIOSO ASKED WHY THEY WANTED IT, MR. DIONISI REPLIED THAT IT WAS REGARDING THE UNION. MR. PREZIOSO ASKED HOW MR. DIONISI COULD JUDGE THAT HE HAD SIGNED FOR THE UNION AND THAT OTHERS IN THE PLANT HAD NOT SIGNED. MR. DIONISI ANSWERED THAT "BETWEEN TONIGHT AND TOMORROW WE WOULD SEE WHO THE OTHERS ARE THAT BELONG TO THE UNION". MR. SPOLVERINO, ONE OF THE OTHER AGGRIEVED PERSONS, WAS PRESENT AND VERIFIED THAT THIS CONVERSATION TOOK PLACE.

5. IT IS NOT WITHOUT INTEREST TO NOTE THAT MR. PREZIOSO HAD BEEN REINSTATED IN HIS EMPLOYMENT ON JUNE 12TH, AND THAT ALTHOUGH HE WAS UNDER SUMMONS TO APPEAR AND TESTIFY AT THE HEARING IN THIS MATTER, HE FAILED TO ANSWER THE SUMMONS AND HAD TO BE SENT FOR IN ORDER TO COMPEL HIS ATTENDANCE AT THE HEARING. ALTHOUGH AN UNWILLING WITNESS, THE BOARD WAS IMPRESSED WITH THE FORTHRIGHT MANNER IN WHICH MR. PREZIOSO TESTIFIED AND ENTERTAINS NO DOUBT AS TO THE VERACITY OF HIS EVIDENCE. THERE WAS

ADDITIONAL EVIDENCE THAT MR. DIONISI MADE INQUIRIES OF OTHER AGGRIEVED PERSONS AS TO THEIR MEMBERSHIP IN, OR SUPPORT FOR, THE UNION.

6. THE RESPONDENT ADDUCED EVIDENCE THAT A LAY-OFF OF EMPLOYEES WAS NECESSITATED BY REASON OF THE FACT THAT THERE WAS A SEASONAL LULL IN THE RESPONDENT'S BUSINESS. THE RESPONDENT'S BUSINESS APPARENTLY REFLECTS THE RESULTS OF THE CURRENT STRIKE IN THE CONSTRUCTION INDUSTRY. THE RESPONDENT'S PLANT MANAGER TESTIFIED THAT HE WAS OPPOSED TO THE LAY-OFF AND WAS OF THE OPINION THAT THE COMPANY WOULD BE ADVERSELY AFFECTED BY THE LAY-OFFS WHICH TOOK PLACE ON MAY 10TH, MAY 23RD AND MAY 24TH WHEN IT WOULD BE REQUIRED, IN THE FUTURE, TO DELIVER ORDERS THAT IT HAD ON HAND. HE ONLY AGREED TO LAYING OFF THE PRODUCTION WORKERS WHEN HE WAS FORCED TO DO SO AT THE REQUEST OF THE PARENT COMPANY AND AT THE DIRECTION OF THE GENERAL MANAGER OF THE COMPANY. THE DIRECTION FROM THE PARENT COMPANY AS CONTAINED IN A "HOUSE MEMORANDUM" FROM ONE OF THE DIRECTORS OF THE PARENT COMPANY READS IN PART AS FOLLOWS: "ONE OF THE CONCLUSIONS WHICH WE REACHED AND WHICH I WAS TO ADVISE YOU OF WAS THE ABSOLUTE REQUIREMENT THAT YOU REDUCE YOUR WORKING FORCE BY A MINIMUM OF TWENTY-FIVE (25) PEOPLE". THE DIRECTION FROM THE GENERAL MANAGER OF THE COMPANY AS CONTAINED IN A "HOUSE MEMORANDUM" OVER THE SIGNATURE OF THE GENERAL MANAGER READS IN PART AS FOLLOWS: "R. GORDON, IN CHARGE OF PRODUCTION AND ENGINEERING, TO REDUCE THE STAFF IN ALL HIS DEPARTMENTS, PARTICULARLY THE NIGHT SHIFT". MR. GORDON WAS TO ADVISE THE GENERAL MANAGER OF THE STEPS HE HAD TAKEN AT A MEETING WHICH WAS TO BE HELD ON WEDNESDAY, MAY 24TH, 1967.

7. THE RESPONDENT'S WITNESSES TESTIFIED THAT THE LAY-OFF OF THE TEN PERSONS ON MAY 10TH WAS NECESSITATED BECAUSE OF ECONOMIC FACTORS AND THAT ONE PRODUCTION LINE ON THE NIGHT SHIFT WAS CLOSED DOWN AT THE TIME OF THIS LAY-OFF. IN CHOOSING THE PEOPLE TO BE LAID OFF, THE RESPONDENT TOOK INTO CONSIDERATION THE RELATIVE WORTH OF THE EMPLOYEES AND LAID OFF THEIR WORST EMPLOYEES ON MAY 10TH, 1967.

8. APART FROM MR. PREZIOSO, NONE OF THE OTHER TEN AGGRIEVED PERSONS HAVE BEEN RECALLED TO WORK, ALTHOUGH THE RESPONDENT HAS IN FACT RECALLED SIX OF THE PERSONS WHO WERE LAID OFF ON MAY 10TH, 1967. THE EXPLANATION THE RESPONDENT'S PLANT MANAGER GAVE FOR RECALLING SOME OF THE PERSONS WHO HAD BEEN LAID OFF ON MAY 10TH, IN PREFERENCE TO THE PERSONS SUBSEQUENTLY LAID OFF ON MAY 23RD AND MAY 24TH, WAS THAT THE PERSONS RECALLED FROM THE MAY 10TH LAY-OFF WERE DEEMED TO BE MORE EFFICIENT AND MORE FLUENT IN THE ENGLISH LANGUAGE. THE RESPONDENT HAS ALSO HIRED NEW EMPLOYEES DURING THE MONTH OF JUNE.

9. WHILE MR. DIONISI DENIED MAKING THE STATEMENTS CONCERNING THE UNION WHICH WERE ATTRIBUTED TO HIM, HAVING HAD AN OPPORTUNITY TO VIEW THE Demeanour OF THE WITNESSES IN THE WITNESS BOX AND THE MANNER IN WHICH THEY TESTIFIED, AND HAVING ASSESSED THE CREDIBILITY OF THE WITNESSES, WE HAVE NO HESITATION IN ACCEPTING THE EVIDENCE OF MR. PREZIOSO AND MR. SPOLVERINO WHERE THEIR EVIDENCE CONFLICTS WITH THE EVIDENCE OF MR. DIONISI.



10. WHILE WE ACCEPT THAT PART OF THE RESPONDENT'S EVIDENCE WHICH INDICATED THAT A LAY-OFF OF EMPLOYEES WAS NECESSITATED FOR ECONOMIC REASONS, WE DO NOT ACCEPT THE RESPONDENT'S EVIDENCE CONCERNING THE REASONS FOR LAYING OFF THE NUMBER OF EMPLOYEES WHO WERE LAID OFF NOR THE RESPONDENT'S REASONS FOR THE CHOICE OF SUCH EMPLOYEES.

11. AS STATED ABOVE, WE HAVE NO HESITATION IN ACCEPTING THE EVIDENCE CALLED BY THE COMPLAINANT THAT MR. DIONISI, ONE OF THE RESPONDENT'S FOREMEN WHO WAS INVOLVED IN EFFECTING THE LAY-OFF, WAS MOTIVATED IN HIS CHOICE OF PERSONS TO BE LAID OFF BECAUSE OF THEIR UNION ACTIVITY.

12. THE RESPONDENT'S PLANT MANAGER TESTIFIED THAT HE WAS OPPOSED TO THE LAY-OFF AND WAS STILL CONCERNED AS TO THE FUTURE EFFECT THAT SUCH A LAY-OFF WOULD HAVE EVEN THOUGH HE RECOGNIZED THE ECONOMIC NECESSITY FOR A LAY-OFF. THE ONLY EVIDENCE WE HAVE AS TO THE NECESSITY FOR LAYING OFF A CERTAIN NUMBER OF EMPLOYEES WAS THE "HOUSE MEMORANDUM" SIGNED BY ONE OF THE VICE-PRESIDENTS OF THE RESPONDENT'S PARENT COMPANY WHO URGED THAT TWENTY-FIVE PERSONS BE LAID OFF. THE RESPONDENT'S GENERAL MANAGER, IN THE "HOUSE MEMORANDUM" SIGNED BY HIM, DIRECTED THE PLANT MANAGER TO LAY OFF EMPLOYEES BUT LEFT THE NUMBERS TO THE DISCRETION OF THE PLANT MANAGER. HOWEVER, WE FIND THAT WHEN THE PLANT MANAGER EFFECTED A LAY-OFF, TO WHICH HE CLAIMED TO BE OPPOSED, HE DID NOT LAY OFF THE MINIMUM NUMBER SUGGESTED BUT LAID OFF ALMOST FORTY-FIVE PER CENT MORE THAN WAS SUGGESTED BY THE PARENT COMPANY. THIS FACT APPEARS TO BE CONTRADICTORY TO HIS STATEMENT THAT HE WAS OPPOSED TO LAYING OFF ANYONE. ALSO, WHEN IT WAS FOUND NECESSARY TO RECALL PERSONS, THE RESPONDENT RECALLED SIX EMPLOYEES WHO HAD BEEN LAID OFF ON MAY 10TH, EVEN THOUGH THE EMPLOYEES LAID OFF ON MAY 10TH HAD BEEN ASSESSED AT THAT TIME AS BEING THE RESPONDENT'S WORST EMPLOYEES.

13. WHILE THE BOARD RECOGNIZES THAT A LANGUAGE BARRIER CAN BE A REAL CAUSE OF CONCERN TO AN EMPLOYER, THAT BARRIER EXISTED TO THE SAME EXTENT ON MAY 10TH AS IT DID ON MAY 23RD AND MAY 24TH, AND THIS MUST HAVE BEEN A CONSIDERATION IN CHOOSING THE PERSONS TO BE LAID OFF ON MAY 10TH. THE LANGUAGE BARRIER COULD NOT THEREFORE HAVE BEEN THE REAL REASON IN THE CHOICE OF PEOPLE TO BE RECALLED. AGAIN, IT IS NOT WITHOUT INTEREST TO NOTE THAT THE TWELVE PERSONS WHO HAVE BEEN RECALLED TO WORK DURING THE MONTH OF JUNE WOULD REDUCE THE NET NUMBER LAID OFF TO TWENTY-FOUR, WHICH NUMBER IS SUSPICIOUSLY CLOSE TO THE TWENTY-FIVE PERSONS WHOM THE RESPONDENT'S PARENT COMPANY SUGGESTED BE LAID OFF.

14. IN VIEW OF THE CIRCUMSTANCES SET OUT ABOVE, HAVING REGARD TO ALL THE EVIDENCE IN THIS CASE, AND THE CREDIBILITY OF THE WITNESSES, WE ARE IMPELLED TO FIND THAT THE ACT OF THE RESPONDENT IN LAYING OFF THE AGGRIEVED PERSONS WAS PART OF A PATTERN OF OPPOSITION TO THE COMPLAINANT'S ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES, AND THIS OPPOSITION CONTINUED SUBSEQUENT TO THE LAY-OFFS AND WAS REFLECTED IN THE CHOICE OF PERSONS TO BE RECALLED TO WORK.

15. THE BOARD IS THEREFORE SATISFIED THAT MR. COLANGELO, L. LAGRASSA, C. LAMANNA, A. W. PARSONS AND G. PREZIOSO WERE LAID OFF BY THE RESPONDENT

ON MAY 23RD, 1967, AND THAT N. SPOLVERINO, A. CASULLO, L. DESANTIS, A. COLANGELO, I. COLANGELO AND A. CRIMI WERE LAID OFF BY THE RESPONDENT ON MAY 24TH, 1967, CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT, IN THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY THE SAID PERSONS.

16. THE BOARD THEREFORE DETERMINES THAT N. COLANGELO, L. LAGRASSA, C. LAMANNA, A. W. PARSONS, N. SPOLVERINO, A. CASULLO, L. DESANTIS, A. COLANGELO, I. COLANGELO AND A. CRIMI SHALL BE REINSTATED IN THE POSITIONS HELD BY THEM AT THE TIME OF THEIR DISCHARGE. THE BOARD NOTES THAT G. PREZIOSO HAS ALREADY BEEN REINSTATED BY THE RESPONDENT IN HIS EMPLOYMENT.

17. THE BOARD THEREFORE DIRECTS:

(A) THAT THE RESPONDENT PAY TO

N. COLANGELO	THE AMOUNT OF	\$440.00
L. LAGRASSA	THE AMOUNT OF	\$245.00
C. LAMANNA	THE AMOUNT OF	\$405.00
A. W. PARSONS	THE AMOUNT OF	\$380.00
G. PREZIOSO	THE AMOUNT OF	\$215.00
N. SPOLVERINO	THE AMOUNT OF	\$365.00
A. CASULLO	THE AMOUNT OF	\$310.00
L. DESANTIS	THE AMOUNT OF	\$310.00
A. COLANGELO	THE AMOUNT OF	\$310.00
I. COLANGELO	THE AMOUNT OF	\$170.00
A. CRIMI	THE AMOUNT OF	\$100.00

BEING THE AMOUNTS OF THE LOSS OF EARNINGS SUSTAINED BY EACH OF THE ABOVE NAMED PERSONS BY REASON OF THEIR HAVING BEEN LAID OFF CONTRARY TO THE ACT BETWEEN THE DATE OF THEIR RESPECTIVE LAY-OFFS AND JUNE 29TH, 1967, THE DATE OF THE LAST HEARING IN THIS MATTER.

(B) THE BOARD FURTHER DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS SUSTAINED BY THE AGGRIEVED PERSONS BY REASONS OF THEIR HAVING BEEN LAID OFF BETWEEN JUNE 29TH, 1967 AND THE DATE OF THEIR REINSTATEMENT.

(C) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNTS REFERRED TO IN PARAGRAPH (B) HEREOF WITHIN FOURTEEN DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO EACH OF THE AGGRIEVED PERSONS.

DECISION OF BOARD MEMBER H. F. IRWIN:

JULY 12, 1967.

1. I DISSENT.

2. THE UNCONTESTED EVIDENCE UNDER OATH OF H. S. LAWES, COMPTROLLER, AND ROBERT W. GORDON, PLANT MANAGER, WAS TO THE EFFECT THAT A VERY CONTROVERSIAL POLICY MATTER RELATING TO HIGH INVENTORY, UNSATISFACTORY PROFIT LEVELS AND THE LAYING-OFF OF A SUBSTANTIAL NUMBER OF PRODUCTION WORKERS HAD BEEN UNDER ACTIVE DISCUSSION AND CONSIDERATION BY THE TOP FOUR COMPANY OFFICERS OF THE CANADIAN DIVISION AND THE PRESIDENT OF THE PARENT COMPANY IN LOUISVILLE, KENTUCKY, U.S.A. SINCE JANUARY, 1967.

3. AT THE APRIL MEETING OF THESE OFFICERS, TOP MANAGEMENT EXPRESSED CONCERN AND DISPLEASURE AT THE FURTHER BUILD-UP OF AN ALREADY HIGH INVENTORY. THERE WAS A FURTHER INCREASE IN INVENTORY IN MAY WHEN THE SECOND HIGHEST INVENTORY IN THE HISTORY OF THE COMPANY'S OPERATIONS WAS REACHED. THIS UNSATISFACTORY SITUATION WAS DISCUSSED BY TOP MANAGEMENT AT ITS MEETING ON FRIDAY, MAY 5TH, LAST. IT WAS DECIDED TO CUT PRODUCTION IMMEDIATELY AND ON WEDNESDAY, MAY 10TH, SEVEN EMPLOYEES IN THE ASSEMBLY DEPARTMENT AND THREE IN THE PAINT SHOP WERE LAID-OFF.

4. ON TUESDAY, MAY 15TH, MR. H. BATES, CHIEF EXECUTIVE OFFICER OF THE CANADIAN DIVISION, ATTENDED A MEETING HELD IN LOUISVILLE, KENTUCKY. ON MAY 16TH, HE ISSUED A MEMORANDUM TO LAWES AND GORDON EXPRESSING EXTREME DISAPPOINTMENT IN THE OPERATION OF THE CANADIAN DIVISION AND SHARPLY REPRIMANDED THEM FOR NOT TAKING THE REQUIRED STEPS TO PREVENT THE BUILD-UP OF AN INVENTORY TO THE VALUE OF OVER ONE-HALF MILLION DOLLARS. BATES CONCLUDED HIS MEMORANDUM BY ISSUING A DIRECTIVE TO CURTAIL VARIOUS OPERATIONS INCLUDING A REDUCTION OF STAFF IN ALL THE PRODUCTION DEPARTMENTS.

5. A MEETING WAS HELD ON THURSDAY, MAY 18TH, TO REVIEW MR. BATES' INSTRUCTIONS AND TO DECIDE WHAT ACTION SHOULD BE TAKEN TO CARRY OUT HIS DIRECTION. APPARENTLY, THE COMPANY HAD BUILT UP AN INVENTORY OF CERTAIN PRODUCTS TO MEET AN ANTICIPATED DEMAND FROM THE CONSTRUCTION INDUSTRY WHICH DIDN'T MATERIALIZE. A SIMILAR SITUATION HAD DEVELOPED IN MAY, JUNE AND JULY OF 1966 WHEN 45 OUT OF A TOTAL OF 68 EMPLOYEES (66%) WERE LAID-OFF AND REHIRING DID NOT COMMENCE UNTIL AUGUST OF THE SAME YEAR.

6. IN VIEW OF THESE CIRCUMSTANCES, IT WAS DECIDED THAT PRODUCTION LINES MUST BE CUT FROM 3 TO  $1\frac{1}{2}$  AND THAT A MINIMUM OF 25 TO 30 ADDITIONAL EMPLOYEES HAD TO BE LAID-OFF. TEN (10) EMPLOYEES HAD ALREADY BEEN LAID-OFF ON MAY 10TH.

7. THIS UNCONTRADICTED EVIDENCE SUPPORTED BY DOCUMENTARY EXHIBITS FILED BY THE RESPONDENT COMPANY AMPLY SUPPORTS ITS CONTENTION THAT THE CURTAILMENT OF MANUFACTURING OPERATIONS AND THE LAYING-OFF OF PRODUCTION EMPLOYEES WERE BOTH IMPERATIVE AND NECESSARY BECAUSE OF HIGH INVENTORY AND UNSATISFACTORY BUSINESS CONDITIONS WHICH HAD EXISTED FOR SEVERAL MONTHS.

8. THE COMPLAINANT UNION FILED A COMPLAINT ON BEHALF OF 14 PERSONS WHO IT ALLEGES WERE DEALT WITH BY THE RESPONDENT COMPANY CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT IN THAT THEY WERE LAID-OFF FROM THEIR EMPLOYMENT ON MAY 23RD AND MAY 24TH BECAUSE THEY WERE MEMBERS OF THE UNION OR HAD EXPRESSED THEIR INTENTION OF BECOMING SUCH OR WERE EXERCISING OTHER RIGHTS UNDER THE LABOUR RELATIONS ACT. COMPLAINTS IN RESPECT OF THREE OF THESE PERSONS, NAMELY, MARIA OTELLO, STANLEY SIMMONS AND HAROLD STRICKLAND WERE ABANDONED AT THE HEARING BEFORE THE BOARD. EXHIBIT 5, FILED BY THE RESPONDENT AT THE HEARING, BROUGHT OUT THE FOLLOWING FACTS:-

PERSONNEL LAID-OFF MAY 10, 1967

ASSEMBLY DEPARTMENT

1. M. ABBATANGLO	RECALLED JUNE 26, 1967
2. G. BORGH	
3. C. SCALA	
4. C. TIANO	RECALLED JUNE 26, 1967.
5. L. TOLLIS	
6. G. VINCENZI	RECALLED JUNE 14, 1967.
7. L. CERNIGLIARO	RECALLED JUNE 14, 1967.

PAINT SHOP

1. R. BURGARETTA	
2. G. GRAZIOSI	RECALLED JUNE 12, 1967.
3. R. MORRA	RECALLED JUNE 14, 1967.

PERSONNEL LAID-OFF MAY 23, 1967

(PAID UP TO AND INCLUDING MAY 22, 1967)

PRESS SHOP

1. N. COLANGELO*	
2. P. GIUSTI	QUIT JUNE 15, 1967
3. B. HUBERS	
4. L. LA GRASSA*	
5. C. LAMANNA*	
6. J. McLARY	
7. A. W. PARSONS*	
8. G. PRESIOSO*	RECALLED JUNE 12, 1967
9. S. SIMMONS**	RECALLED JUNE 14, 1967
10. H. STRICKLAND**	RECALLED JUNE 19, 1967



PERSONNEL LAID-OFF MAY 24, 1967  
(PAID UP TO AND INCLUDING MAY 23, 1967)

PRESS SHOP

1.	I. BALLA	
2.	F. FARRUGIA	
3.	G. FOSTER	RECALLED JUNE 19, 1967
4.	N. MARSHALL	
5.	N. SPOLVERINO*	

ASSEMBLY DEPARTMENT

1.	P. ALLEN	QUIT MAY 26, 1967
2.	A. CASULLO*	
3.	L. DESANTIS*	
4.	P. MARENES	RECALLED JUNE 12, 1967
5.	M. PALANDRA	RECALLED JUNE 12, 1967
6.	A. PAPADIMITRIOS	
7.	B. STONE	

PAINT SHOP

1.	A. COLANGELO*
2.	I. COLANGELO*
3.	A. CRIMI*
4.	M. OTELLO**

NOTE:      \* - DENOTES AGGRIEVED PERSONS

             \*\* - INDICATES COMPLAINT SUBSEQUENTLY ABANDONED

SUMMARY OF

LAY-OFFS - RECALLS - AGGRIEVED PERSONS

DEPARTMENTS	DATES AND NUMBERS LAID-OFF			TOTAL NUMBER LAID-OFF	NUMBER RECALLED	NO. OF PERSONS COMPLAINED OF
	MAY 10	MAY 23	MAY 24			
PRESS SHOP	-	5	10	15	4	6
ASSEMBLY	-	7	-	14	6	2
PAINT SHOP	3	-	4	7	2	3
TOTAL	10	12	14	36	12	11

9. WHEREAS IN MAY AND JUNE, 1966, 45 OF THE 68 EMPLOYEES OR 66% WERE LAID-OFF BECAUSE OF SIMILAR BUSINESS CONDITIONS, ONLY 36 OF THE 121 EMPLOYEES AS OF MAY 10TH OR 30% WERE LAID-OFF THIS YEAR. AS 71 OF THE 111 EMPLOYEES (64%) IN THE EMPLOY OF THE COMPANY ON MAY 23RD WERE UNION MEMBERS, THERE WERE BOUND TO BE A NUMBER OF UNION MEMBERS LAID-OFF. IN FACT, THEY WILL PROBABLY BE IN THE MAJORITY BECAUSE UNION MEMBERS OUTNUMBERED NON-UNION MEMBERS 2 TO 1.

10. IN CIRCUMSTANCES SUCH AS THIS, AN EMPLOYER IS PLACED IN AN UNTENABLE POSITION WHEN A LAY-OFF OF EMPLOYEES IS REQUIRED. IF UNION MEMBERS ARE INCLUDED IN THE LAY-OFF, THE EMPLOYER IS USUALLY CHARGED WITH DISCRIMINATING AGAINST THESE PERSONS BECAUSE OF THEIR UNION MEMBERSHIP OR UNION ACTIVITY IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. WHAT EMPLOYEES SHOULD HAVE BEEN LAID-OFF IN PLACE OF THE AGGRIEVED PERSONS? IF THE BOARD ORDERS THEIR REINSTATEMENT, WHAT EMPLOYEES ARE TO BE LAID-OFF TO MAKE ROOM FOR THEM? IS A UNION MEMBERSHIP CARD TO BE A PASSPORT TO IMMUNITY FROM LAY-OFFS? ARE EMPLOYEES WHO EXERCISED THEIR RIGHTS TO REFRAIN FROM JOINING A UNION TO BE LAID-OFF AND THEREBY DISCRIMINATED AGAINST? THESE ARE NOT THEORETICAL QUESTIONS BUT GENUINE AND PRACTICAL PROBLEMS WITH WHICH AN EMPLOYER IS CONFRONTED. THE BOARD HAS STATED IN PREVIOUS DECISIONS THAT A HEAVY ONUS RESTS ON THE COMPLAINANT TO PROVE THE ALLEGED VIOLATION. SUCH PROOF, I CONTEND, MUST BE BASED ON MORE THAN MERE INFERENCE OR THE BALANCE OF PROBABILITIES.

11. IN THE INSTANT CASE, THE COMPLAINANT HAS NOT DISCHARGED THIS HEAVY ONUS. ALREADY, 12 OF THE 36 PERSONS LAID-OFF HAVE BEEN RECALLED. THESE INCLUDE STANLEY SIMMONS AND HAROLD STRICKLAND IN RESPECT OF WHOM COMPLAINTS WERE FILED AND SUBSEQUENTLY ABANDONED. THERE IS EVERY REASON TO BELIEVE THAT, AS WAS THE CASE LAST YEAR, THE LAID-OFF EMPLOYEES WILL BE RECALLED AS SOON AS BUSINESS CONDITIONS IMPROVE AND WORK IS AVAILABLE FOR THEM. AS TO THE CONFLICT OF EVIDENCE BETWEEN FIVE OF THE AGGRIEVED EMPLOYEES AND THE TWO FOREMEN INVOLVED, I HAVE NO HESITATION IN ACCEPTING THE STRAIGHT FORWARD EVIDENCE GIVEN IN A CANDID MANNER BY THE FOREMEN AS AGAINST THE ADMITTEDLY PREVIOUSLY DISCUSSED AND, I WOULD FIND, AGREED UPON EVIDENCE GIVEN BY THE SAID EMPLOYEES THROUGH AN INTERPRETER.

12. FOR THE ABOVE REASONS, I WOULD HAVE DISMISSED THE COMPLAINTS.

13216-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. USARCO LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: LOU E. INGLE AND BILL STETSON FOR THE  
COMPLAINANT, AND E. L. STRIMMER AND F. LEVY FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
O. HODGES: JULY 26, 1967.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, ALLEGING THAT AMERICO YACHETTI HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE ACT.

2. YACHETTI WAS DISCHARGED BY THE RESPONDENT ON JUNE 5TH, 1967. PRIOR TO HIS DISCHARGE HE HAD WORKED FOR THE RESPONDENT FOR APPROXIMATELY ONE YEAR AS A MECHANIC, GREASER AND CLEAN-UP MAN IN THE RESPONDENT'S GARAGE. THE REASON GIVEN FOR THE DISCHARGE WAS THAT YACHETTI HAD REPORTED LATE FOR WORK ON SUNDAY, JUNE 4TH, 1967. THE TIME HE ARRIVED AT WORK ON JUNE 4TH WAS APPROXIMATELY 1:30 P.M.

3. YACHETTI TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT FOR ABOUT ONE YEAR. ALL THIS TIME HE WAS EMPLOYED IN THE SAME CAPACITY. HE STATED THAT AT NO TIME HAD ANYONE EVER SPOKEN TO HIM ABOUT HIS WORK AS LONG AS HE HAD BEEN WITH THE RESPONDENT. THE ONLY ADVERSE CRITICISM THAT HE WAS AWARE OF PRIOR TO HIS DISCHARGE WAS WHAT HE OVERHEARD IN A CONVERSATION BETWEEN SEIDENFELD AND SMITH, REFERRED TO SUBSEQUENTLY HEREIN.

4. ABOUT MID APRIL THE UNION COMMENCED ITS ORGANIZING CAMPAIGN. YACHETTI WAS ONE OF THE FIRST TO JOIN. HE STATED HE WAS ONE OF THE "ORIGINATORS" AND THAT IT WAS HIS JOB TO ORGANIZE THE GARAGE. HE STATED THAT HE SIGNED UP EMPLOYEES AS MEMBERS, BUT DID ALL HIS RECRUITING OFF THE COMPANY PREMISES.

5. DURING THE COURSE OF ORGANIZING YACHETTI MET ONE MACHEAUR, WHOM HE BELIEVED TO BE A MEMBER OF MANAGEMENT AT THE TIME, ALTHOUGH THAT QUESTION IS IN DISPUTE AT THE MOMENT. MACHEAUR WHO, AS INDICATED ABOVE, WAS MADE A FOREMAN FOLLOWING SMITH'S DISMISSAL, CHASTISED YACHETTI AND IN VULGAR LANGUAGE INDICATED HIS STRONG DISAPPROVAL OF THE EMPLOYEES JOINING THE UNION. HE STATED, ACCORDING TO YACHETTI, THAT PEOPLE WORKING FOR HIM HAD NO BUSINESS JOINING THE UNION WITHOUT CONSULTING HIM. IT ALSO IS IN EVIDENCE THAT WOODS, NOW YACHETTI'S FOREMAN, AFTER COMPLAINING ABOUT THE UNION CAMPAIGN BEING COMMENCED WITHOUT HIS KNOWLEDGE, JOINED THE UNION. WE FIND IT DIFFICULT TO BELIEVE TESTIMONY GIVEN BY WOODS THAT HE WAS NOT AWARE THAT YACHETTI, TO WHOM HE EXPRESSED HIS DISAPPROVAL, WAS A MEMBER OF THE UNION. THIS EVIDENCE OF YACHETTI, WHICH WAS NOT DENIED, INDICATES THAT HIS CONNECTION WITH THE UNION AT THE TIME OF THE ORGANIZING CAMPAIGN WAS KNOWN IN THE PLANT.

6. THE EVIDENCE IS CLEAR FROM AN EXAMINATION OF YACHETTI'S TIME CARDS, PRODUCED BY THE COMPANY, THAT IT WAS CUSTOMARY FOR HIM TO REPORT FOR SUNDAY WORK, WHICH GENERALLY CONSISTED OF GREASING AND OILING TRUCKS, AT VARIOUS HOURS DURING THE DAY. IN OTHER WORDS, IT WOULD APPEAR THAT THE CHOICE OF WHAT TIME YACHETTI REPORTED FOR WORK ON SUNDAYS WAS LEFT ENTIRELY TO HIM. DURING THE PERIOD COVERED BY THE TIME CARDS, WHICH WAS ADMITTED TO BE TYPICAL, YACHETTI'S FOREMAN WAS ONE SMITH. AT THE TIME OF THE DISCHARGE OF YACHETTI, SMITH HAD BEEN DISCHARGED AND HIS NEW FOREMAN WAS RAY WOODS. THE LATTER HAD REQUIRED YACHETTI TO REPORT FOR

WORK ON SUNDAY, JUNE 4TH, AS THERE WERE TWO TRUCKS TO BE GREASED. NOTHING WAS SAID BY WOODS AS TO WHAT TIME YACHETTI WAS TO COME IN SO THAT HE, ACCORDING TO HIS TESTIMONY, SIMPLY ASSUMED THAT HE COULD COME IN AT ANY TIME AS HE HAD IN THE PAST. THERE WAS NO SUGGESTION THAT THE TRUCKS WERE REQUIRED FOR SUNDAY AND IT WOULD NOT APPEAR THAT IT MIGHT BE ESSENTIAL, FROM THE POINT OF VIEW OF THE WORK ITSELF, THAT THE GREASING BE DONE AT ANY PARTICULAR TIME.

7. THE FORMER FOREMAN, SMITH, DURING WHOSE TERM OF OFFICE YACHETTI HAD FOLLOWED THE PRACTICES WITH RESPECT TO SUNDAY WORK OUTLINED ABOVE, WAS DISCHARGED FOR COLLUSION WITH OTHER EMPLOYEES IN FALSIFYING TIME CARDS. FOLLOWING SMITH'S DISCHARGE MR. FRANK LEVY, THE GENERAL MANAGER, CALLED A MEETING OF EMPLOYEES AT WHICH HE ANNOUNCED THE DISCHARGE OF SMITH AND THE APPOINTMENT OF WOODS AND MACHEUR AS NEW FOREMEN. HE TESTIFIED THAT HE SPOKE IN GENERALITIES TO THE EMPLOYEES AND TOLD THEM THAT EVERYBODY WOULD START WORK AT THE SAME TIME AND THAT PRACTICES CARRIED ON UNDER SMITH WOULD NO LONGER BE TOLERATED. HE OUTLINED THAT EVERYONE WOULD START AT 7:30 IN THE MORNINGS. IT WAS SUGGESTED THAT THESE REMARKS, DIRECTED AS THEY WERE TO IRREGULARITIES WITH RESPECT TO PUNCHING TIME CARDS, AMOUNTED TO A WARNING TO YACHETTI WITH RESPECT TO HIS REPORTING TIME ON SUNDAYS. WE THINK THIS WOULD BE, IN VIEW OF LEVY'S TESTIMONY THAT HE WAS SPEAKING IN GENERALITIES, TO LEND TOO GREAT AN IMPACT TO THAT INCIDENT WHICH HAD REFERENCE TO THE FALSIFICATION OF CARDS.

8. EVIDENCE WAS GIVEN BY MR. SEIDENFELD, YARD SUPERINTENDENT, THAT SOMETIME AROUND THE FIRST WEEK IN MAY 1967, SEIDENFELD CAME INTO THE GARAGE WHERE YACHETTI WORKED AND SPOKE TO SMITH, THE FOREMAN, CONCERNING YACHETTI'S WORK. SEIDENFELD TOLD SMITH HE WANTED HIM TO "GET RID OF THAT MAN". WHEN SMITH INQUIRED WHY, SEIDENFELD SAID, "BECAUSE EVERY TIME I COME IN HERE THE MAN IS STANDING AROUND DOING NOTHING". SEIDENFELD TESTIFIED THAT SOME TWO WEEKS LATER HE AGAIN SPOKE TO SMITH ABOUT YACHETTI AND ADVISED HIM TO LAY HIM OFF. SMITH SAID THAT HE WAS RUNNING THE GARAGE AND NOT SEIDENFELD, AND INDICATED HE WOULD NOT GET RID OF YACHETTI. IN HIS TESTIMONY YACHETTI SAID THAT SMITH, ON THE FIRST OCCASION, TOLD SEIDENFELD THAT HE WAS TRYING TO HAVE HIM, SMITH, GET RID OF HIS BEST MAN. SEIDENFELD DENIES THAT SUCH A STATEMENT WAS MADE BY SMITH. THE NEXT DAY, SEIDENFELD SAID, HE SPOKE TO MR. LEVY, THE GENERAL MANAGER, ABOUT YACHETTI AND SMITH AND REPORTED TO HIM THE SUBSTANCE OF THE TWO ENCOUNTERS SET OUT ABOVE. LEVY, IN HIS TESTIMONY, CONFIRMED THIS EVIDENCE. HE STATED THAT IT HAD BEEN HIS INTENT TO SPEAK TO SMITH CONCERNING YACHETTI WHEN THE MATTER OF THE IRREGULARITIES WITH RESPECT TO THE TIME CARDS CAME UP RESULTING, AS NOTED ABOVE, IN SMITH'S DISCHARGE.

9. AFTER SMITH'S DISCHARGE WOODS WAS APPOINTED FOREMAN OF THE GARAGE AND BECAME YACHETTI'S FOREMAN. SEIDENFELD TESTIFIED THAT HE TOLD WOODS TO KEEP A CLOSE EYE ON YACHETTI. HE TOLD WOODS HE WAS UNHAPPY WITH YACHETTI'S WORK. WOODS TESTIFIED THAT HE TALKED OVER THE MATTER OF YACHETTI'S WORK WITH SEIDENFELD AND AGREED WITH HIS OPINION



OF IT. HE STATED HE FIGURED YACHETTI DID NOT BELONG AT WORK BECAUSE HE DID NOT PULL HIS FULL WEIGHT.

10. IT IS OF SOME SIGNIFICANCE, HOWEVER, IN A MATTER SUCH AS THIS, TO NOTE THAT THERE IS ABSOLUTELY NO EVIDENCE INDICATING THAT ANYTHING WHATSOEVER IN THE NATURE OF ADVERSE CRITICISM OF YACHETTI'S WORK WAS AT ANY TIME COMMUNICATED TO HIM BY ANYONE DURING THE YEAR HE WAS EMPLOYED BY THE RESPONDENT IN THE SAME CAPACITY. FURTHERMORE, IT MUST BE OBSERVED THAT IT APPARENTLY WAS NOT UNTIL SUCH TIME AS THE UNION ORGANIZING TOOK PLACE THAT SEIDENFELD, OR ANYONE ELSE IN MANAGEMENT, TOOK ANY PARTICULAR NOTICE OF YACHETTI'S WORK OR WORK HABITS. IT WAS SUGGESTED THAT YACHETTI HAD KNOWN SMITH FOR A GREAT MANY YEARS AND THAT FROM THAT IT MIGHT BE INFERRED THAT SMITH PROTECTED HIM. SMITH WAS NOT ABLE, HOWEVER, TO PROTECT HIM FROM SEIDENFELD'S OBSERVATIONS WHICH COULD HAVE BEEN AS EASILY MADE AT ANY PREVIOUS TIME AS THEY WERE DURING THE PERIOD OF UNION ACTIVITY IN APRIL AND MAY.

11. THERE IS, THEREFORE, NO EVIDENCE INDICATING THAT YACHETTI WAS CONSIDERED TO BE AN UNSATISFACTORY WORKER UNTIL SUCH TIME AS HE BECAME AN ORIGINATOR OF THE UNION MOVEMENT IN THE PLANT. AT THAT PRECISE TIME THE YARD SUPERINTENDENT APPARENTLY DISCOVERED THAT THE MAN WAS NOT WORKING SATISFACTORILY. THIS DISCOVERY WAS NOT EVIDENT TO SMITH, THE MAN'S OWN FOREMAN, WHO CONSTANTLY REFUSED TO DISCHARGE YACHETTI ON THE GROUNDS ADVANCED BY SEIDENFELD. AFTER SMITH'S DEPARTURE AND WOODS ACCESSION TO THE FOREMANSHIP, YACHETTI WAS GIVEN HIS IMMEDIATE DISCHARGE FOR FAILURE TO REPORT FOR WORK AT 7:30 ON A SUNDAY MORNING, NOTWITHSTANDING THE FACT THAT HE HAD BEEN ACCUSTOMED, AS CORROBORATED BY THE COMPANY'S OWN RECORDS, TO REPORT FOR SUNDAY WORK AT VARYING TIMES AND NOTHING HAD BEEN SAID TO HIM CONCERNING A CHANGE IN THIS CUSTOM. IN VIEW OF THE EVIDENCE CONTAINED IN ITS RECORDS, THE COMPANY MUST BE FOUND TO HAVE HAD FULL KNOWLEDGE OF THE REPORTING PROCEDURES FOLLOWED OVER A CONSIDERABLE PERIOD BY YACHETTI. IN OUR OPINION THE INTENT TO GET RID OF YACHETTI WAS FORMED DURING THE COURSE OF AND BECAUSE OF HIS UNION ORGANIZING ACTIVITIES AND WAS PURSUED BY SEIDENFELD UNTIL THE DATE OF HIS DISCHARGE AND WAS THE TRUE CAUSE OF THE COMPANY'S ACTION FOR WHICH THE LATE REPORTING WAS EMPLOYED AS AN UNREASONABLE AND UNACCEPTABLE EXCUSE.

12. THE BOARD, THEREFORE, FINDS THAT AMERICO YACHETTI WAS DISCHARGED BY THE RESPONDENT COMPANY CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

13. THE BOARD'S DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

- (1) THE RESPONDENT SHALL FORTHWITH PAY TO AMERICO YACHETTI THE SUM OF \$610.00 FOR WAGES LOST FROM AND INCLUDING THE 5TH DAY OF JUNE, 1967, TO AND INCLUDING THE 17TH DAY OF JULY, 1967.

- (2) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY AMERICO YACHETTI IN THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD RECEIVED PRIOR TO AND UP TO THE DATE OF HIS DISCHARGE ON JUNE 5TH, 1967.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING UPON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED, OR WHICH MAY BE HEREINAFTER SUSTAINED BY AMERICO YACHETTI BETWEEN THE DATE OF THE HEARING ON JUNE 5TH, 1967, AND THE DATE OF HIS ACTUAL REEMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF SUCH FURTHER COMPENSATION, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER H. F. IRWIN:

JULY 26, 1967.

1. I DISSENT.

2. THE COMPLAINANT TRADE UNION COMPLAINS THAT THE AGGRIEVED PERSON, AMERICO YACHETTI, HAS BEEN DEALT WITH BY THE RESPONDENT COMPANY CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT IN THAT ON JUNE 5TH LAST HE WAS DISCHARGED FROM HIS EMPLOYMENT BY RAY WOODS, GARAGE FOREMAN, AND SAUL SEIDENFELD, SUPERINTENDENT, BECAUSE HE WAS A MEMBER OF THE COMPLAINANT TRADE UNION OR HAD EXPRESSED HIS INTENTION OF BECOMING SUCH OR WAS EXERCISING OTHER RIGHTS UNDER THE ACT.

3. ON THE EVIDENCE ADDUCED AT THE HEARING, I AM IMPELLED TO FIND THAT THE COMPLAINANT HAS NOT DISCHARGED THE HEAVY ONUS UPON IT TO PROVE ITS ALLEGATIONS THAT YACHETTI WAS DISMISSED FROM HIS EMPLOYMENT BECAUSE HE BECAME A MEMBER OF THE UNION OR WAS EXERCISING OTHER RIGHTS UNDER THE LABOUR RELATIONS ACT. TO FIND OTHERWISE, WOULD BE TO BASE MY DECISION ON SUSPICION, INFERENCES AND SUPPOSITION AS WELL AS UNCONTROLLED SYMPATHY FOR THE AGGRIEVED.

4. THE COMPLAINANT'S APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR THE RESPONDENT'S EMPLOYEES, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, WAS FILED WITH THE BOARD ON APRIL 24TH OR 42 DAYS BEFORE THE DATE OF YACHETTI'S DISCHARGE FROM EMPLOYMENT. AS HE STATED HE WAS ONE OF THE FIRST EMPLOYEES TO JOIN THE UNION AND ALSO SIGNED UP OTHER EMPLOYEES DURING THE ORGANIZATIONAL CAMPAIGN, THIS ACTIVITY APPARENTLY TOOK PLACE DURING THE EARLY PART OF APRIL OR TWO MONTHS PRIOR TO HIS DISMISSAL. THERE IS NO EVIDENCE THAT MANAGEMENT ASKED EMPLOYEES QUESTIONS

TO ASCERTAIN WHO HAD JOINED THE UNION OR WHICH EMPLOYEES HAD BEEN INSTRUMENTAL IN HAVING THE UNION LAUNCH A MEMBERSHIP DRIVE. NOR IS THERE A JOE OR TITTLE OF EVIDENCE THAT MEMBERS OF MANAGEMENT HAD EVEN MENTIONED TO EMPLOYEES THE FACT THAT A UNION ORGANIZATIONAL CAMPAIGN WAS IN PROGRESS. YACHETTI'S DISCHARGE OCCURRED SIX WEEKS AFTER THE DATE OF APPLICATION FOR CERTIFICATION.

5. IF THIS WAS AN ARBITRATION BOARD CONSTITUTED TO DECIDE IF YACHETTI HAD BEEN DISCHARGED FOR JUST CAUSE, I MIGHT WELL HAVE REACHED A DIFFERENT DECISION. HOWEVER, THIS IS NOT AN ARBITRATION BOARD, IT IS A STATUTORY BOARD APPOINTED AND CONSTITUTED UNDER AND BOUND BY THE PROVISIONS OF THE LABOUR RELATIONS ACT AND THE RULES OF PROCEDURE AND THE REGULATIONS MADE THEREUNDER.

6. SECTION 65 (4) (A) OF THE ACT STATES IN PART THAT IF THE BOARD IS SATISFIED THAT THE PERSON CONCERNED HAS BEEN DISCHARGED FROM HIS EMPLOYMENT CONTRARY TO THE ACT, IT SHALL DETERMINE WHAT, IF ANYTHING, THE EMPLOYER SHALL DO OR REFRAIN FROM DOING IN RESPECT THERETO. UNLESS THE BOARD IS SO SATISFIED, IT HAS NO JURISDICTION TO GIVE RELIEF TO THE AGGRIEVED EMPLOYEE EVEN THOUGH THE CAUSE OF THE DISCHARGE IS CONSIDERED FRIVOLOUS OR COMPLETELY UNJUSTIFIED FOR OTHER REASONS.

7. ON THE EVIDENCE BEFORE ME, I AM NOT SATISFIED THAT THE AGGRIEVED PERSON, YACHETTI, WAS DISMISSED CONTRARY TO THE LABOUR RELATIONS ACT AND I AM OBLIGED TO DISMISS THE COMPLAINT.

INDEXED ENDORSEMENT - SECTION 79 A

13186-674M: DUPLATE CANADA LIMITED (EMPLOYER) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA LOCAL 222 (TRADE UNION).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: J. W. HEALY, Q.C., B. M. ANDERSON AND L. B. BOSWELL FOR THE EMPLOYER, AND EDWARD B. JOLLIFFE, Q.C., HOWARD POWERS, JOHN MEAGHER AND HARRY BENSON FOR THE TRADE UNION.

DECISION OF THE BOARD: JULY 7, 1967.

1. THIS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT OF THE QUESTION WHETHER THE PROVISION SET OUT IN SECTION 34(2) OF THE ACT SHALL BE DEEMED TO BE IMPORTED INTO THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

2. SECTION 34(1), (2) AND (3) OF THE ACT ARE AS FOLLOWS:-

34.(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE FOR THE FINAL AND BINDING SETTLEMENT BY ARBITRATION,

WITHOUT STOPPAGE OF WORK, OF ALL DIFFERENCES BETWEEN THE PARTIES ARISING FROM THE INTERPRETATION, APPLICATION, ADMINISTRATION OR ALLEGED VIOLATION OF THE AGREEMENT, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE.

- (2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1, IT SHALL BE DEEMED TO CONTAIN THE FOLLOWING PROVISION:

WHERE A DIFFERENCE ARISES BETWEEN THE PARTIES RELATING TO THE INTERPRETATION, APPLICATION OR ADMINISTRATION OF THIS AGREEMENT, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE, OR WHERE AN ALLEGATION IS MADE THAT THIS AGREEMENT HAS BEEN VIOLATED, EITHER OF THE PARTIES MAY, AFTER EXHAUSTING ANY GRIEVANCE PROCEDURE ESTABLISHED BY THIS AGREEMENT NOTIFY THE OTHER PARTY IN WRITING OF ITS DESIRE TO SUBMIT THE DIFFERENCE OR ALLEGATION TO ARBITRATION AND THE NOTICE SHALL CONTAIN THE NAME OF THE FIRST PARTY'S APPOINTEE TO AN ARBITRATION BOARD. THE RECIPIENT OF THE NOTICE SHALL WITHIN FIVE DAYS INFORM THE OTHER PARTY OF THE NAME OF ITS APPOINTEE TO THE ARBITRATION BOARD. THE TWO APPOINTEES SO SELECTED SHALL, WITHIN FIVE DAYS OF THE APPOINTMENT OF THE SECOND OF THEM, APPOINT A THIRD PERSON WHO SHALL BE THE CHAIRMAN. IF THE RECIPIENT OF THE NOTICE FAILS TO APPOINT AN ARBITRATOR, OR IF THE TWO APPOINTEES FAIL TO AGREE UPON A CHAIRMAN WITHIN THE TIME LIMITED, THE APPOINTMENT SHALL BE MADE BY THE MINISTER OF LABOUR FOR ONTARIO UPON THE REQUEST OF EITHER PARTY. THE ARBITRATION BOARD SHALL HEAR AND DETERMINE THE DIFFERENCE OR ALLEGATION AND SHALL ISSUE A DECISION AND THE DECISION IS FINAL AND BINDING UPON THE PARTIES AND UPON ANY EMPLOYEE AFFECTED BY IT. THE DECISION OF A MAJORITY IS THE DECISION OF THE ARBITRATION BOARD, BUT IF THERE IS NO MAJORITY THE DECISION OF THE CHAIRMAN GOVERNS.



- (3) IF, IN THE OPINION OF THE BOARD, ANY PART OF THE ARBITRATION PROVISION, INCLUDING THE METHOD OF APPOINTMENT OF THE ARBITRATOR OR ARBITRATION BOARD, IS INADEQUATE, OR IF THE PROVISION SET OUT IN SUBSECTION 2 IS ALLEGED BY EITHER PARTY TO BE UNSUITABLE, THE BOARD MAY, ON THE REQUEST OF EITHER PARTY, MODIFY THE PROVISION SO LONG AS IT CONFORMS WITH SUBSECTION 1, BUT, UNTIL SO MODIFIED, THE ARBITRATION PROVISION IN THE COLLECTIVE AGREEMENT OR IN SUBSECTION 2, AS THE CASE MAY BE, APPLIES.

3. IT IS CLEAR THAT THE REQUIREMENT OF SECTION 34(1) IS MANDATORY, AND THAT EVERY COLLECTIVE AGREEMENT MUST CONTAIN SUCH A PROVISION AS IS THERE REFERRED TO. THE CONSEQUENCE WHICH FOLLOWS IN THE EVENT OF ABSENCE OF SUCH A PROVISION FROM THE COLLECTIVE AGREEMENT IS SET OUT IN SECTION 34(2). THIS CONSEQUENCE IS ITSELF CLEARLY MANDATORY: IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION (1), IT SHALL BE DEEMED TO CONTAIN THE PROVISION SET OUT IN SUBSECTION (2). IN ORDER THAT THE BOARD MAY ANSWER THE QUESTION REFERRED TO IT BY THE MINISTER OF LABOUR THEREFORE, IT IS NECESSARY FOR US TO DETERMINE WHETHER OR NOT THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES CONTAINS "SUCH A PROVISION AS IS MENTIONED IN SUBSECTION (1)" OF THE LABOUR RELATIONS ACT.

4. THE COLLECTIVE AGREEMENT PROVIDES FOR BOTH A GRIEVANCE AND AN ARBITRATION PROCEDURE IN ARTICLE 13 OF THE AGREEMENT:-

#### GRIEVANCE PROCEDURE

- (A) IT IS THE DESIRE OF THE PARTIES HERETO THAT COMPLAINTS OF EMPLOYEES BE ADJUSTED AS QUICKLY AS POSSIBLE. IF AN EMPLOYEE HAS ANY COMPLAINT OR QUESTION WHICH MIGHT RESULT IN A WRITTEN GRIEVANCE HE, AND/OR HIS COMMITTEEMAN SHALL DISCUSS THE MATTER WITH THE FOREMAN CONCERNED.
- (B) AN EMPLOYEE HAVING COMPLIED WITH THE PROVISIONS OF (A) WHO WISHES TO LODGE A WRITTEN GRIEVANCE, SHALL BE ENTITLED TO HAVE THE ASSISTANCE OF HIS COMMITTEEMAN IN PREPARING SUCH GRIEVANCE ON FORMS SUPPLIED BY THE COMPANY. THE COMMITTEEMAN SHALL TAKE IT UP WITH THE FOREMAN, WHO SHALL GIVE AN ANSWER IN WRITING WITHIN TWO (2) WORKING DAYS OF THE PRESENTATION OF THE GRIEVANCE. IT SHALL BE OPTIONAL TO THE COMPANY TO DECLINE TO CONSIDER ANY GRIEVANCE, THE ALLEGED CIRCUMSTANCES OF WHICH OCCURRED MORE THAN FIVE WORKING DAYS PRIOR TO ITS PRESENTATION EXCEPT IN THE CASE OF A GRIEVANCE CLAIMING FAILURE ON THE PART OF THE COMPANY TO GIVE THE REQUIRED NOTICE OF RECALL,

IN WHICH INSTANCE, THE PERIOD OF TIME SHALL BE THIRTY (30) DAYS. PROBATIONARY EMPLOYEES ARE ENTITLED TO LODGE A GRIEVANCE IN THE SAME MANNER, AND TO THE SAME EXTENT AS REGULAR EMPLOYEES, EXCEPT WITH RESPECT TO THEIR SEPARATION FROM EMPLOYMENT.

- (C) IF THE DECISION OF THE FOREMAN IS NOT ACCEPTABLE TO THE EMPLOYEE, HIS COMMITTEEMAN MAY APPEAL THE DECISION WITHIN TWO (2) WORKING DAYS TO THE PERSONNEL OFFICER OR HIS DESIGNATE. THE PERSONNEL OFFICER OR HIS DESIGNATE WILL RENDER A DECISION IN WRITING WITHIN TWO (2) WORKING DAYS AFTER THE DAY ON WHICH THE GRIEVANCE WAS PRESENTED TO HIM.
- (D) IF THE DECISION OF THE PERSONNEL OFFICER OR HIS DESIGNATE IS NOT SATISFACTORY TO THE AGGRIEVED, THE GRIEVANCE MAY BE PRESENTED WITHIN FIVE (5) WORKING DAYS BY THE AGGRIEVED'S ZONE COMMITTEEMAN TO THE PERSONNEL DEPARTMENT TO BE TAKEN UP AT A MEETING ARRANGED BETWEEN MANAGEMENT AND THE PLANT COMMITTEE, WHICH WILL BE HELD WITHIN FIVE (5) WORKING DAYS FROM THE TIME OF RECEIPT. UNLESS OTHERWISE AGREED, MANAGEMENT SHALL RENDER ITS DECISION IN WRITING TO THE PLANT CHAIRMAN OR HIS DESIGNATE, WITHIN TWO (2) WORKING DAYS FOLLOWING THE MEETING.
- (E) IF THE DECISION OF MANAGEMENT IS NOT SATISFACTORY TO THE EMPLOYEE CONCERNED, THE CHAIRMAN OF THE PLANT COMMITTEE MAY, BY SERVING WRITTEN NOTICE WITHIN FIFTEEN (15) DAYS OF THE DATE ON WHICH MANAGEMENT'S DECISION WAS RECEIVED, APPEAL THEREFROM TO AN IMPARTIAL UMPIRE SELECTED BY THE COMPANY AND THE UNION. IF THE COMPANY AND THE UNION CANNOT AGREE WITHIN FIVE (5) WORKING DAYS ON AN UMPIRE, THE MINISTER OF LABOUR OF THE PROVINCE OF ONTARIO SHALL BE REQUESTED TO SELECT ONE.

THE DECISION OF THE UMPIRE SHALL BE FINAL AND BINDING ON BOTH PARTIES. THE FEES AND EXPENSES OF THE UMPIRE SHALL BE SHARED EQUALLY BY THE PARTIES HERETO.

- (F) THE UNION MAY PRESENT A "POLICY GRIEVANCE" TO THE PERSONNEL OFFICER OF THE COMPANY OR HIS DESIGNATE. A "POLICY GRIEVANCE" IS DEFINED AS ONE WHICH ALLEGES A MISINTERPRETATION OR VIOLATION OF A PROVISION OF THIS AGREEMENT AND WHICH COULD NOT OTHERWISE BE RESOLVED AT LOWER STEPS OF THE GRIEVANCE PROCEDURE BECAUSE OF THE NATURE OR SCOPE OF THE

SUBJECT MATTER OF THE GRIEVANCE.

WHEN PRESENTED WITH SUCH "POLICY GRIEVANCE" THE PERSONNEL OFFICER OR HIS DESIGNATE WILL ARRANGE A MEETING BETWEEN THE PLANT COMMITTEE AND MANAGEMENT NOT LATER THAN TEN (10) WORKING DAYS AFTER SUCH PRESENTATION.

MANAGEMENT WILL RENDER ITS DECISION TO THE PLANT CHAIRMAN IN WRITING NOT LATER THAN FIVE (5) WORKING DAYS FOLLOWING SUCH MEETING. SUCH "POLICY GRIEVANCE" MATTER MAY BE REFERRED BY EITHER PARTY FOR ARBITRATION IN THE SAME WAY AS THE GRIEVANCE OF AN EMPLOYEE.

- (G) NO MATTER MAY BE SUBMITTED TO AN UMPIRE WHICH HAS NOT BEEN PROPERLY CARRIED THROUGH ALL PREVIOUS STAGES OF THE GRIEVANCE PROCEDURE, AND NO PERSON MAY BE APPOINTED AS AN UMPIRE WHO HAS TAKEN PART IN AN ATTEMPT TO NEGOTIATE OR SETTLE THE GRIEVANCE.
- (H) AN EMPLOYEE WITH SENIORITY, WHO IS DISCHARGED, MAY PRESENT A GRIEVANCE IN WRITING THROUGH THE PLANT COMMITTEE TO MANAGEMENT WITHIN THREE (3) WORKING DAYS OF DISCHARGE AND MANAGEMENT WILL REVIEW THE GRIEVANCE WITH THE COMMITTEE AND RENDER A DECISION WITHIN THREE (3) WORKING DAYS AFTER SUCH REVIEW. IF THE DECISION OF MANAGEMENT IS NOT ACCEPTABLE TO THE AGGRIEVED, THE GRIEVANCE MAY BE APPEALED TO THE UMPIRE AS HEREIN PROVIDED.
- (I) WHEN A GRIEVANCE WHICH AFFECTS THE RATES OF PAY OF AN EMPLOYEE IS SETTLED IN A MANNER WHICH INVOLVES A CHANGE IN RATE, SUCH CHANGE SHALL BE LIMITED RETROACTIVELY UP TO BUT NOT TO EXCEED SIXTY (60) CALENDAR DAYS PRIOR TO THE DATE ON WHICH THE GRIEVANCE WAS FIRST SUBMITTED IN WRITING TO THE COMPANY.
- (J) AT ANY STAGE OF THE GRIEVANCE PROCEDURE, INCLUDING ARBITRATION, THE CONFERRING PARTIES MAY HAVE THE ASSISTANCE OF THE EMPLOYEE OR EMPLOYEES CONCERNED AND ANY NECESSARY WITNESSES, AND ALL REASONABLE ARRANGEMENTS WILL BE MADE TO PERMIT THE CONFERRING PARTIES TO HAVE ACCESS TO THE PLANT TO VIEW DISPUTED OPERATIONS AND TO CONFER WITH NECESSARY WITNESSES.
- (K) AN ARBITRATOR SHALL NOT ALTER, ADD TO, SUBTRACT FROM, MODIFY OR AMEND ANY PART OF THIS AGREEMENT. HE SHALL, HOWEVER, IN RESPECT OF A GRIEVANCE INVOLVING THE SUSPENSION OR DISCHARGE OF AN EMPLOYEE, BE ENTITLED TO MODIFY OR SET ASIDE SUCH PENALTY,

IF, IN THE OPINION OF THE ARBITRATOR, IT IS JUST AND  
EQUITABLE TO DO SO.

5. THE PROVISION CONTEMPLATES THE BRINGING OF GRIEVANCES EITHER BY INDIVIDUAL EMPLOYEES OR BY THE UNION ITSELF, AND THE ULTIMATE DISPOSITION OF SUCH GRIEVANCES BY ARBITRATION. THERE IS NO PROVISION FOR THE BRINGING OF GRIEVANCES BY THE COMPANY (WHICH IS, OF COURSE, ONE OF THE PARTIES TO THE AGREEMENT), AND THERE IS, IN PARTICULAR, NO PROVISION FOR ARBITRATION OF ANY GRIEVANCE INITIATED BY THE COMPANY. INDEED, THE PROVISIONS OF ARTICLE 13(G) OF THE AGREEMENT WOULD APPEAR CLEARLY TO PRECLUDE THE ARBITRATION OF SUCH MATTERS. WE CAN FIND NO OTHER PROVISIONS IN THE AGREEMENT WHICH, HOWEVER LIBERALLY CONSTRUED, WOULD ESTABLISH THE RIGHT OF THE COMPANY TO PROCEED TO ARBITRATION IN THE MANNER CONTEMPLATED BY SECTION 34(1) OF THE LABOUR RELATIONS ACT.

6. THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE PARTIES DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION (1) OF SECTION 34 OF THE LABOUR RELATIONS ACT. IT FOLLOWS, BY SUBSECTION (2) OF SECTION 34, THAT THE COLLECTIVE AGREEMENT IS DEEMED TO CONTAIN THE PROVISION SET OUT IN SECTION 34(2) OF THE ACT.

7. IN THESE CIRCUMSTANCES THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES IS DEEMED TO CONTAIN THE ARBITRATION PROVISION SET OUT IN SECTION 34(2) OF THE LABOUR RELATIONS ACT.

8. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS "YES".

#### INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

13309-67-JD: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (COMPLAINANT) v. CRUMP MECHANICAL CONTRACTING LIMITED; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILLWRIGHTS LOCAL 2309; INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 24, 1967.

1. BY A DECISION OF THE BOARD DATED JUNE 30TH, 1967 THE BOARD MADE THE FOLLOWING INTERIM ORDER WITH REGARD TO THE COMPLAINT MADE BY THE COMPLAINANT IN THIS MATTER:

ALL WORK BEING DONE BY THE RESPONDENT  
CRUMP MECHANICAL CONTRACTING LIMITED IN  
CONNECTION WITH THE INSTALLATION OF  
CLARIFIERS AT THE ONTARIO WATER RESOURCES



COMMISSION HIGHLAND CREEK PROJECT WHICH WAS BEING PERFORMED BY MEMBERS OF THE COMPLAINANT ON AND BEFORE JUNE 26TH, 1967, SHALL BE PERFORMED BY MEMBERS OF THE COMPLAINANT COMMENCING ON JULY 4TH, 1967.

THIS ORDER SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

2. PURSUANT TO SECTION 66(4) OF THE LABOUR RELATIONS ACT, THE BOARD ON JUNE 30TH, 1967 FILED IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT A COPY OF THE ABOVE INTERIM ORDER.

3. BY LETTER DATED JULY 10TH, 1967, THE COMPLAINANT REQUESTS LEAVE OF THE BOARD TO WITHDRAW ITS COMPLAINT. FOR THE BOARD TO GRANT THE COMPLAINANT'S REQUEST AT THIS STAGE IN THE PROCEEDINGS OBVIOUSLY WOULD PRECLUDE ANY DETERMINATION BY THE BOARD ON THE MERITS OF THE COMPLAINT. IN THESE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT ITS CONSENT TO THE COMPLAINANT'S REQUEST NECESSARILY MUST BE CONDITIONAL UPON A REVOCATION BY THE BOARD OF ITS INTERIM ORDER IN THIS MATTER.

4. THE BOARD HEREBY REVOKES ITS INTERIM ORDER DATED JUNE 30TH, 1967.

5. THE COMPLAINT IS WITHDRAWN BY LEAVE OF THE BOARD.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

19159-67-R: LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. BEACHELL CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 19, 1967.

1. THE BOARD HAS CONSIDERED THE RESPONDENT'S LETTER OF JULY 6TH, 1967. IN ARRIVING AT ITS DECISION DATED JUNE 13, 1967, THE BOARD ACTED ON THE ASSUMPTION THAT IT HAD BEEN AGREED BY THE PARTIES THAT D. BINNEKAMP AND JACK SHUPE EXERCISED MANAGERIAL FUNCTIONS AND, BY VIRTUE OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, WOULD NOT THEREFORE BE INCLUDED IN THE BARGAINING UNIT. THE BOARD HAS EXAMINED THE NOTES OF THE EXAMINER APPOINTED IN THIS MATTER AND IT IS NOT CLEAR FROM THOSE NOTES AS TO WHY THE PARTIES AGREED TO THE EXCLUSION OF BINNEKAMP AND SHUPE. THE BOARD NOTES THAT, IN THE PROPOSED BARGAINING UNIT SET OUT IN THE APPLICATION, EXCLUSIONS WERE NOT SPELLED OUT AND IT IS POSSIBLE, THEREFORE, THAT THE PARTIES, AND PARTICULARLY THE RESPONDENT, MAY NOT HAVE HAD THE CONCEPT OF NON-WORKING FOREMEN, THE EXCLUSION PROVIDED

FOR IN THE BOARD'S DECISION, PRESENT IN THEIR MINDS AT THE TIME THEY AGREED TO THE EXCLUSION OF THE TWO NAMED PERSONS. ON THE OTHER HAND, IT SHOULD BE CLEARLY UNDERSTOOD THAT IF A WORKING FOREMAN DOES IN FACT EXERCISE MANAGERIAL FUNCTIONS, THEN SUCH PERSON IS EXCLUDED FROM A BARGAINING UNIT BY REASON OF SECTION 1(3)(B) OF THE ACT.

2. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD HAS DECIDED TO RECONSIDER ITS DECISION DATED JUNE 13, 1967, AND, AS A NECESSARY PRELIMINARY THERETO, MR. ROBICHEAU IS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF D. BINNEKAMP AND JACK SHUPE.

13210-67-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND O. HODGES.

APPEARANCES AT HEARING: HUGH R. CASTLE AND WM. E. LUCK FOR THE APPLICANT, AND T. F. STORIE AND W. T. GRETTON FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 28, 1967.

1. IN ITS DECISION OF JUNE 27TH, 1967, THE BOARD DISMISSED THE APPLICATION FOR CERTIFICATION HEREIN ON ITS FINDING THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED DID NOT ESTABLISH MEMBERSHIP IN THE APPLICANT OF EMPLOYEES OF THE RESPONDENT.

2. THE MATTER WAS RELISTED FOR HEARING FOLLOWING A REQUEST FOR RECONSIDERATION BY THE APPLICANT. AT THE SECOND HEARING IT WAS ADMITTED BY THE APPLICANT THAT THE RECEIPTS FOR MONEY SAID TO HAVE BEEN PAID BY EACH EMPLOYEE NAMED THEREON AS INITIATION FEES WERE SIGNED BY AN OFFICER OF THE APPLICANT, WHO STATED THAT HE HAD NOT COLLECTED THE MONEY FROM THE PERSONS TO WHOM THE RECEIPTS WERE ISSUED. THE RECEIPTS, INCIDENTALLY, WERE NOT COUNTERSIGNED. THERE WERE EIGHT APPLICATION CARDS FILED, TO EACH OF WHICH A RECEIPT WAS ATTACHED. IT WAS REVEALED THAT THE CARDS WERE DELIVERED TO THE UNION OFFICE BY SEVERAL INDIVIDUALS, TOGETHER WITH A TOTAL OF EIGHT DOLLARS. THE EVIDENCE IS THAT THE UNION OFFICER LATER MADE OUT RECEIPTS AND MAILED THEM TO THE EMPLOYEES, WHOM, HE SAID, HE ASSUMED HAD PAID. HE WAS OF THE OPINION THAT IF ANYONE HAD NOT, IN FACT, PAID THEY WOULD SO NOTIFY HIM.

3. IN LIGHT OF THE FOREGOING, THE BOARD, IN VIEW OF ITS WELL ESTABLISHED REQUIREMENTS WITH RESPECT TO MEMBERSHIP EVIDENCE AND MONEY PAYMENTS, HAS NO ALTERNATIVE BUT TO DISMISS THE APPLICATION ON THAT GROUND ALONE. THAT BEING THE CASE, THERE WOULD APPEAR TO BE NO USEFUL PURPOSE SERVED IN DEALING FURTHER WITH THE REQUEST FOR RECONSIDERATION.

4. THE APPLICATION IS DISMISSED.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

13397-67-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52,  
AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT)  
V. J. D. COAD CONSTRUCTION CO LTD. (RESPONDENT).

6. THE JOB SITES AFFECTED BY THIS APPLICATION FALL INTO TWO SEPARATE BOARD AREAS. IT IS NOT THE PRACTICE OF THE BOARD TO JOIN SEPARATE AREAS TOGETHER. FURTHERMORE, THE BOARD'S GENERAL POLICY IS NOW TO AVOID DESCRIBING A BARGAINING UNIT IN TERMS OF "ALL EMPLOYEES" BUT RATHER TO RESTRICT THE UNIT TO TRADES ON THE JOB AT THE DATE OF THE MAKING OF THE APPLICATION. REFERENCE IS MADE TO THE WINTER & SON CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1967, P. 889.

(JULY 27, 1967).

STATISTICAL TABLES FOR JULY 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	JULY 1ST 4 MONTHS OF FISCAL YEAR 1967	1967-68	1966-67
I. CERTIFICATION	79	335	343
II. DECLARATION TERMINATING BARGAINING RIGHTS	6	30	16
III. DECLARATION OF SUCCESSOR STATUS	3	4	2
IV. DECLARATION THAT STRIKE UNLAWFUL	8	23	9
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	11	-
VI. CONSENT TO PROSECUTE	14	59	41
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	22	48	43
VIII. MISCELLANEOUS	<u>4</u>	<u>18</u>	<u>21</u>
TOTAL	<u>136</u>	<u>528</u>	<u>475</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	JULY 1ST 4 MONTHS OF FISCAL YEAR 1967	1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	73	344	281



TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	JULY 1967	1ST 4 MONTHS 1967-68	FISCAL YR. 1966-67
I. CERTIFICATION	77	340	328
II. DECLARATION TERMINATING BARGAINING RIGHTS	6	26	18
III. DECLARATION OF SUCCESSOR STATUS	3	4	2
IV. DECLARATION THAT STRIKE UNLAWFUL	5	17	6
V. DECLARATION THAT LOCK- OUT UNLAWFUL	8	11	-
VI. CONSENT TO PROSECUTE	15	35	30
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	15	59	38
VIII. MISCELLANEOUS	<u>5</u>	<u>29</u>	<u>16</u>
TOTAL	<u>134</u>	<u>521</u>	<u>438</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
<u>JULY</u>	<u>1ST 4 MONTHS</u>	<u>FISCAL YR.</u>	<u>JULY</u>	<u>1ST 4 MONTHS</u>	<u>FISCAL YR.</u>
<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>

CERTIFICATION

GRANTED	62	253	230	1505	7294	5141
DISMISSED	10	65	56	109	3679	3522
WITHDRAWN	<u>5</u>	<u>22</u>	<u>39</u>	<u>60</u>	<u>410</u>	<u>620</u>
TOTAL	<u>77</u>	<u>340</u>	<u>325</u>	<u>1674</u>	<u>11383</u>	<u>9283</u>

TERMINATION  
OF BARGAINING  
RIGHTS

GRANTED	3	13	11	31	178	393
DISMISSED	3	13	7	523	640	187
WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	<u>6</u>	<u>26</u>	<u>18</u>	<u>554</u>	<u>818</u>	<u>580</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>JULY</u>	<u>1ST 4 MONTHS</u>	<u>FISCAL YR.</u>
		<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	1	1	2
	DISMISSED	-	2	-
	WITHDRAWN	<u>4</u>	<u>14</u>	<u>4</u>
	TOTAL	<u>5</u>	<u>17</u>	<u>6</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	-
	WITHDRAWN	<u>8</u>	<u>10</u>	<u>-</u>
	TOTAL	<u>8</u>	<u>11</u>	<u>-</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	1	3	3
	DISMISSED	2	4	2
	WITHDRAWN	<u>12</u>	<u>28</u>	<u>25</u>
	TOTAL	<u>15</u>	<u>35</u>	<u>30</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>JULY</u> <u>1967</u>	<u>1ST 4 MONTHS OF FISCAL YR.</u> <u>1967-68</u>	<u>1966-67</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	4	8
POST-HEARING VOTE	3	19	12
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	5	2
POST-HEARING VOTE	2	9	20
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>6</u>	<u>37</u>	<u>42</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>JULY</u> <u>1967</u>	<u>1ST 4 MONTHS OF FISCAL YR.</u> <u>1967-68</u>	<u>1966-67</u>
*RESPONDENT UNION SUCCESSFUL	-	1	4
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>7</u>	<u>9</u>
	<u>2</u>	<u>8</u>	<u>13</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.





AUGUST 1967



ONTARIO

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ONTARIO LABOUR RELATIONS BOARD



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING AUGUST 1967

BARGAINING AGENTS CERTIFIED DURING AUGUST

NO VOTE CONDUCTED

12779-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT)  
V. METROPOLITAN LIFE INSURANCE COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BUILDINGS DIVISION AT OTTAWA ENGAGED IN BUILDING MAINTENANCE AND CLEANING OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (30 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 437).

12877-66-R: FOOD HANDLERS LOCAL 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL - CIO, CLC (APPLICANT) V. CENTRAL SUPER MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF-SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THAT THE EXCLUSION OF STUDENTS EMPLOYED IN OFF-SCHOOL HOURS IS BY REASON OF AGREEMENT OF THE PARTIES.

(SEE INDEXED ENDORSEMENT PAGE 444).

13183-67-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. MELODY MAID CHILDREN'S WEAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

13184-67-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. NATURFLEX (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

13199-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. R.C.A. VICTOR COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, SECURITY GUARDS, PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES DATED APRIL 1ST, 1967, AND PERSONS EITHER INCLUDED IN OR EXCLUDED BY THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE IN ITS DECISION DATED JULY 31ST, 1967, BOARD FILE NO. 12896-66-R." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13253-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. PIONEER ELECTRIC ONTARIO LIMITED (RESPONDENT) V. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, A.F.T.E., A.F.L. - C.I.O., C.L.C. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PLANT NURSE, DRAFTSMEN, METHODS ANALYSTS, METHODS MEN, ENGINEERS, QUALITY CONTROL INSPECTORS, CONFIDENTIAL SECRETARIES TO DEPARTMENT MANAGERS AND TO PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (14 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13298-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. COLUMBUS MCKINNON LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AREA SALES REPRESENTATIVES, PURCHASING AGENT, PAYMASTER, GENERAL ACCOUNTANT, ONE SECRETARY TO EACH OF THE FOLLOWING: PRESIDENT, VICE-PRESIDENT ADMINISTRATION, COMPTROLLER, MARKETING MANAGER AND MANUFACTURING MANAGER, AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING BASIS." (42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13313-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. A. G. SPALDING AND BROS. OF CANADA, LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND PLANT CLERICAL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARIES TO THE PRESIDENT, VICE-PRESIDENT, SECRETARY-TREASURER, PERSONNEL MANAGER, FACTORY MANAGER AND SALES MANAGER, OUTSIDE SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THEIR SCHOOL VACATION PERIODS, STUDENTS ON A CO-OPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (51 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SIGNED AGREEMENT OF THE PARTIES DATED AUGUST 3, 1967, ON FILE WITH THE BOARD).

13357-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF HALDIMAND (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE COUNTY OF HALDIMAND JAIL AT CAYUGA, SAVE AND EXCEPT CHIEF TURNKEY AND PERSONS ABOVE THE RANK OF CHIEF TURNKEY." (9 EMPLOYEES IN THE UNIT).

13364-67-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. BARRY MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAGERSVILLE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

13371-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MUNICIPAL CORPORATION OF THE COUNTY OF PERTH (RESPONDENT).

UNIT: "ALL JAIL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE GOVERNOR." (11 EMPLOYEES IN THE UNIT).

13381-67-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. L & W DISTRIBUTORS LIMITED, CARRYING ON BUSINESS AS N & D SUPERMARKET (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS STORES AT WINDSOR, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 451 ).



13385-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SOO FOUNDRY & MACHINE CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (45 EMPLOYEES IN THE UNIT).

13392-67-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. MUSCILLO TRANSPORT COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

13404-67-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. INTERCITY FOOD SERVICES, INC. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE STEINBERG'S DEPARTMENT STORE, 200 CHATHAM STREET, WINDSOR, SAVE AND EXCEPT HEAD HOSTESSES, PERSONS ABOVE THE RANK OF HEAD HOSTESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN THE EMPLOY OF THE RESPONDENT AT THE STEINBERG'S DEPARTMENT STORE, 200 CHATHAM STREET, WINDSOR." (5 EMPLOYEES IN THE UNIT).

13414-67-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 225 (APPLICANT) V. CANADIAN UNION OF STUDENTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT THE COMPTROLLER AND PERSONS ABOVE THE RANK OF COMPTROLLER." (8 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ASSOCIATE SECRETARIES ARE NOT INCLUDED IN THE BARGAINING UNIT.

13417-67-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. ATLAS CONSTRUCTION CO LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (INTERVENER).

UNIT #1: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL CARPENTERS AND CARPENTERS' APPRENTICES' IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13419-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL UNION 1669 (APPLICANT) V. SHELL OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE  
RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING  
FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(2 EMPLOYEES IN THE UNIT).

13423-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) V. E. G. M. CAPE & Co. (1956) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS  
OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE  
AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT,  
MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING  
THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN  
THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY  
HALL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR  
EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF  
SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF  
NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 453 ).

13424-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837  
(APPLICANT) V. SKYLIGHT WINDOW CLEANING Co. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN  
THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF  
HALTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."  
(9 EMPLOYEES IN THE UNIT).

13425-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL  
IRON WORKERS, LOCAL 765 (APPLICANT) V. G. I. INSTALLATIONS LIMITED  
(RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF  
CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT,  
SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-  
WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

13427-67-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220,  
B.S.E.I.U. (APPLICANT) V. CENTRAL PARK LODGE OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT PROFESSIONAL  
NURSING STAFF, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR  
FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS  
PER WEEK." (14 EMPLOYEES IN THE UNIT).

13431-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. STAIMAN STEEL  
LIMITED (RESPONDENT, V. GROUP OF EMPLOYEES (OBJECTORS)).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (39 EMPLOYEES IN THE UNIT).

13436-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JEAN DE BREBEUF HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STURGEON FALLS, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (118 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

13458-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ATLAS CONSTRUCTION CO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13459-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DELTA EXPLOSIVES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN BOSTON TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

13460-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RECON STEEL OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF LONDON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13462-67-R: CANADIAN METAL WORKERS' UNION No. 198, N.C.C.L. (APPLICANT) V. OSHAWA ENGINEERING AND WELDING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

13466-67-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. HENRY ALPHONSE DUQUETTE (RESPONDENT).



UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT THE I.G.A. FOODLINER STORE AT TILBURY, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

13467-67-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. HENRY ALPHONSE DUQUETTE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE I.G.A. FOODLINER STORE AT TILBURY, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

13470-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. REBMEC INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (131 EMPLOYEES IN THE UNIT).

13480-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. GRANT READY MIX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

13493-67-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA - LOCAL UNION 1891 (APPLICANT) V. SLIVA BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13494-67-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1891 (APPLICANT) V. V. & T. PAINTING AND DECORATING (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND



EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(2 EMPLOYEES IN THE UNIT).

13496-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL #1071 (APPLICANT) V. ARDEVAN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13506-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CITY PARKING CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FIELD SUPERVISORS, RESIDENT MANAGERS, PERSONS ABOVE THE RANK OF FIELD SUPERVISOR OR RESIDENT MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (126 EMPLOYEES IN THE UNIT).

13516-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. WELCON LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13517-67-R: MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. UNION CATERERS LIMITED (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN IN THE EMPLOY OF THE RESPONDENT WORKING IN OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (2 EMPLOYEES IN THE UNIT).

13518-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL No. 506 (APPLICANT) V. RICHARD & B. A. RYAN (1958) LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN DUFFERIN COUNTY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13527-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALNOR EARTHMOVING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD,

RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

13528-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ANDRE KNIGHT LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

13533-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. INTERNORTH CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13537-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. ELROSE CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13538-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ACME BUILDING AND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

13545-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DEL BROCCO CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN

AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

13546-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. JOHNSTON & SMITH CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

13292-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT AT NOBEL, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

7

NUMBER OF PERSONS WHO CAST BALLOTS

7

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

7

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF INTERVENER

0

13312-67-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 114 (APPLICANT) V. PILKINGTON BROTHERS (CANADA) LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	12
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	0

13340-67-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 114 (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	0

13422-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (YORK WORKS) (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE POWER HOUSE AT ITS "YORK WORKS" ON CASTLEFIELD AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON REVISED VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	1

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

13074-67-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. THE BREITHAUPT LEATHER COMPANY LIMITED (RESPONDENT) V. BOOT AND SHOE WORKERS' UNION, AFFILIATED WITH C.L.C. A.F. OF L. C.I.O. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT HASTINGS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIODS." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	48
NUMBER OF PERSONS WHO CAST BALLOTS	48
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	34
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	13
NUMBER OF SPOILED BALLOTS	1

13294-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. G. W. MARTIN LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF HARCOURT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (107 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	75
NUMBER OF PERSONS WHO CAST BALLOTS	76
BALLOTS SEGREGATED AND NOT COUNTED	3
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	43
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	29

13316-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BENARNAL COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

13363-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ORANGEVILLE FOUNDRY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

NO VOTE CONDUCTED

13159-67-R: LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BEACHELL CONSTRUCTION COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

13260-67-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL CIO CLC (APPLICANT) V. N & D SUPERMARKET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (48 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 447).

13376-67-R: LOCAL UNION No. 1940 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RELIABLE CONSTRUCTION (RESPONDENT). (34 EMPLOYEES).

13412-67-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 786 (APPLICANT) V. FRASER-BRACE ENGINEERING COMPANY, LIMITED (RESPONDENT). (87 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 452).

13446-67-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. CLAIRSON EMPLOYEES ASSOCIATION (INTERVENER). (3 EMPLOYEES).

13473-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. L. ROCCA CONSTRUCTION COMPANY LIMITED (RESPONDENT) (8 EMPLOYEES).

13474-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT RENFREW, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (12 EMPLOYEES IN THE UNIT).

13503-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. McNAMARA CORPORATION LIMITED (RESPONDENT). (1 EMPLOYEE).

13504-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. McNAMARA MARINE LIMITED (RESPONDENT). (34 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13043-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. ARO OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS; PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR; SECRETARIES TO THE PRESIDENT, THE INDUSTRIAL SALES MANAGER, THE AUTOMOTIVE SALES MANAGER AND THE AERONAUTICAL SALES MANAGER; PAYMASTER; FIELD SALES STAFF; STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD; AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	10

13058-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. TUSCA INVESTMENTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE BOILER ROOM AT THE PRUDENTIAL BUILDING, 6 KING STREET WEST, IN METROPOLITAN TORONTO, SAVE AND EXCEPT BUILDING SUPERINTENDENT AND PERSONS ABOVE THE RANK OF BUILDING SUPERINTENDENT." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

13081-67-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 15 OXFORD DRIVE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (79 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	79
NUMBER OF PERSONS WHO CAST BALLOTS	58
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	28
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	29

13264-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DALTON FUELS LIMITED  
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

13265-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DALTON FUELS LIMITED  
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

THE ABOVE APPLICATIONS ARE CONSOLIDATED

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS SANDWICH DIAMOND  
FUELS DIVISION AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK  
OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

13338-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC  
(APPLICANT) V. ROYAL OAK DAIRY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES  
(OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT HAMILTON AND BURLINGTON,  
SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER,  
PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, ONE  
CONFIDENTIAL SECRETARY TO THE OFFICERS OF THE COMPANY." (11 EMPLOYEES IN  
THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

13185-67-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. WM.  
GLUCKIN & Co., CANADA LIMITED (RESPONDENT). (10 EMPLOYEES).

13408-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL  
1988 (APPLICANT) V. HOWARD S. CLARK LTD. (RESPONDENT).



13435-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JEAN DE BREBOEUF HOSPITAL (RESPONDENT). (13 EMPLOYEES).

13438-67-R: LOCAL UNION 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TOTAL ENGINEERING LTD. (RESPONDENT). (3 EMPLOYEES).

13469-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. BABCOCK AND WILCOX CANADA LIMITED (RESPONDENT). (2 EMPLOYEES).

13489-67-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MACDONALD CARTAGE (RESPONDENT). V. CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT & GENERAL WORKERS (INTERVENER). (3 EMPLOYEES).

13491-67-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT, AND GENERAL WORKERS (APPLICANT) V. R. E. LAW CONSTRUCTION COMPANY LIMITED (RESPONDENT). (108 EMPLOYEES).

13495-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. ARDEVAN CONST. LTD. (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF  
DURING AUGUST

13282-67-R: ALFRED J. LAPOINTE (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 412 OF THE A.F. OF L., C.I.O., C.L.C. (RESPONDENT). (GRANTED).

UNIT: "ALL FULL TIME EMPLOYEES OF THE COMPANY'S LICENSED COCKTAIL LOUNGE AND BEVERAGE ROOMS, EXCEPT ASSISTANT MANAGERS, MANAGERS, AND PERSONS ABOVE THE RANK OF MANAGER OR THOSE PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	6

13430-67-R: ARMY, NAVY AND AIRFORCE VETERANS IN CANADA - FORT WILLIAM UNIT No. 257 (APPLICANT) V. BEVERAGE DISPENSER'S UNION LOCAL 757, OF THE HOTEL AND RESTAURANT EMPLOYEES UNION, A.F.L. C.I.O. C.L.C. (FORT WILLIAM) (RESPONDENT). (2 EMPLOYEES). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 457).

13464-67-R: KIVELA BAKING COMPANY (APPLICANT) V. BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 284 (RESPONDENT). (1 EMPLOYEE). (WITHDRAWN).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING AUGUST

13420-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. NORTHERN FOODMARTS LIMITED (RESPONDENT) V. THE SUDBURY GENERAL WORKERS' UNION, LOCAL 101, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING AUGUST

13139-67-U: FRANKI CANADA LIMITED (APPLICANT) V. THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT). (WITHDRAWN).

13302-67-U: DOMINION BRIDGE COMPANY LIMITED (APPLICANT) V. L. McDONALD AND OTHERS (RESPONDENTS). (WITHDRAWN).

13350-67-U: ROBERTSON-YATES CORPORATION LIMITED (APPLICANT) V. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENT). (WITHDRAWN).

13439-67-U: FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) V. ERNEST GENEREUX AND LUCIANO MARTINBIANCO (RESPONDENTS). (WITHDRAWN).

13442-67-U: CONSTRUCTION EQUIPMENT COMPANY LIMITED (APPLICANT) V. JOHN TURCOTTE, PAT THERIAULT AND BARNEY CASHUBEC (RESPONDENTS). (WITHDRAWN).

13450-67-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO (APPLICANT) V. DONALD BABY ET AL (RESPONDENTS). (WITHDRAWN).

13451-67-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO (APPLICANT) V. GARTH ANDERSON ET AL (RESPONDENTS). (WITHDRAWN).

13482-67-U: FRASER-BRACE ENGINEERING COMPANY LIMITED, SUDBURY, ONTARIO (APPLICANT) V. BERNARD ALLEN ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

13303-67-U: DOMINION BRIDGE COMPANY LIMITED (APPLICANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION No. 786 OF SUDBURY, AND JAMES TYE (RESPONDENTS). (WITHDRAWN).

13304-67-U: DOMINION BRIDGE COMPANY LIMITED (APPLICANT) V. L. McDONALD AND OTHERS (RESPONDENTS). (WITHDRAWN).

13367-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. OXFORD PICTURE FRAME CO. LIMITED (RESPONDENT). (WITHDRAWN).

13411-67-U: WESTEEL-ROSCO LIMITED (FORMERLY ROSCO METAL PRODUCTS LIMITED) (APPLICANT) V. UNITED STEELWORKERS OF AMERICA, LOCAL 6448, CLIFFORD LEBLANC THOMAS WAKEMAN AND RAYMOND BENNETT (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 458).

13440-67-U: THE FOUNDATION COMPANY OF CANADA LIMITED (APPLICANT) V. ERNEST GENEREUX (RESPONDENT). (WITHDRAWN).

13441-67-U: THE FOUNDATION COMPANY OF CANADA (APPLICANT) V. LUCIANO MARTINBIANCO (RESPONDENT). (WITHDRAWN).

13443-67-U: CONSTRUCTION EQUIPMENT COMPANY LIMITED (APPLICANT) V. JOHN TURCOTTE (RESPONDENT). (WITHDRAWN).

13444-67-U: CONSTRUCTION EQUIPMENT COMPANY LIMITED (APPLICANT) V. BARNEY CASHUBEC (RESPONDENT). (WITHDRAWN).

13445-67-U: CONSTRUCTION EQUIPMENT COMPANY LIMITED (APPLICANT) V. PAT THERIAULT (RESPONDENT). (WITHDRAWN).

13452-67-U: FRASER-BRACE ENGINEERING COMPANY LIMITED, SUDBURY, ONTARIO (APPLICANT) V. DONALD BABY ET AL (RESPONDENTS). (GRANTED).

13521-67-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) V. MR. LOU POPOVICH (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

AUGUST

12810-66-U: INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION, LOCAL #8 (COMPLAINANT) V. DOMINION LUGGAGE CO. LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 459).

13314-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. G. W. MARTIN LUMBER LIMITED (RESPONDENT). (WITHDRAWN).

13360-67-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. TAMBLYN-PRITCHARD-JOHNSTON Co LTD. (RESPONDENT). (DISMISSED).

13369-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (COMPLAINANT) V. OXFORD PICTURE FRAME CO. LIMITED (RESPONDENT). (WITHDRAWN).

13396-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. THERMOTEX WINDOWS OF CANADA (RESPONDENT). (WITHDRAWN).

13429-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. THOMAS BUILT BUSES OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

13461-67-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. R. E. LAW CRUSHED STONE R. E. LAW CONSTRUCTION LTD. (PAVCO) (RESPONDENT). (WITHDRAWN).

13472-67-U: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (COMPLAINANT) V. BORDEN CHEMICAL COMPANY (CANADA 1962) LIMITED (RESPONDENT). (WITHDRAWN).

13478-67-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. R. E. LAW CRUSHED STONE LIMITED R. E. LAW CONSTRUCTION LTD. (PAVCO) (RESPONDENT). (WITHDRAWN).

13479-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. STAIMAN STEEL LTD. (RESPONDENT). (WITHDRAWN).

13500-67-U: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT, AND GENERAL WORKERS (COMPLAINANT) V. R. E. LAW CONSTRUCTION COMPANY LIMITED R. E. LAW CRUSHED STONE LTD. (RESPONDENT). (WITHDRAWN).

13501-67-U: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. DELL CONSTRUCTION (RESPONDENT). (DISMISSED).

- AND -

13542-67-U: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. DELL CONSTRUCTION (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 463 ).

13508-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. TAYLOR GARAGE DOORS OF CANADA, LIMITED (RESPONDENT). (WITHDRAWN).

13541-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. TAYLOR GARAGE DOORS OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

#### APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

13395-67-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND U. A. W. LOCAL 1459, AND CHRYSLER CANADA LTD. (APPLICANTS). (GRANTED).

#### APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING AUGUST

11802-66-M: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, LOCAL 743 (APPLICANT) V. DUNLOP CANADA LIMITED (WHITBY) (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 464).



13388-67-M: TEXTILE WORKERS UNION OF AMERICA, LOCAL 1664 (APPLICANT) V. SQUARE C TEXTILES LTD. (RESPONDENT).

13526-67-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 148, C.L.C. (APPLICANT) V. THE BOARD OF MANAGEMENT OF THE PIONEER MANOR, SUDBURY, ONTARIO (RESPONDENT).

#### JURISDICTIONAL DISPUTES

13057A-67-JD: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE-FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL # 46 (COMPLAINANT) V. CLEMENT & BELLMORE CONSTRUCTION LIMITED AND INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL # 183, AND LOCAL # 506 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 464).

13212-67-JD: LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. SIROTEK CONTRACTORS LIMITED AND LOCAL UNION No. 1081, LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 479).

13484(A)-67-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 487).

#### REQUEST FOR REVIEW

13175-67-R: HERBERT CADIOU, GARY PATTERSON, JAMES BEAN, ROSS CUMMING AND LORNE ROBINSON (APPLICANTS) V. GALT TYPOGRAPHICAL UNION No. 411 (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 487).

#### APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13310-67-R: BYRON FROUDE AND R. (DICK) HAYWARD (APPLICANTS) V. PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (RESPONDENT) V. E. S. AND A. ROBINSON (CANADA) LIMITED (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 488).

13397-67-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. D. COAD CONSTRUCTION CO LTD. (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 489).

INDEXED ENDORSEMENTS - CERTIFICATION

12779-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796  
(APPLICANT) v. METROPOLITAN LIFE INSURANCE COMPANY (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS O. HODGES AND  
H. F. IRWIN.

APPEARANCES AT THE HEARINGS: J. WEDGE, R. HILL, E. HEDGES AND  
J. H. PARKER FOR THE APPLICANT, AND D. CHURCHILL-SMITH, B. STEWART  
AND J. W. MACKINNON FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 29, 1967.

. . .

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN  
ITS BUILDINGS DIVISION AT OTTAWA ENGAGED IN BUILDING MAINTENANCE AND CLEAN-  
ING OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN,  
OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER  
WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR  
COLLECTIVE BARGAINING.

3. AFTER CONSIDERING THE REPORT OF THE EXAMINER DATED APRIL 7, 1967,  
THE BOARD FINDS FURTHER THAT THE ASSISTANT NIGHT SERVICE FOREMAN, LEO  
BARBER, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B)  
OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE FOR THE PURPOSES OF THE  
ACT AND ACCORDINGLY IS EXCLUDED FROM THE BARGAINING UNIT, BUT THAT THE  
ASSISTANT DAY SERVICE FOREMAN, ERNEST GIBEALT, DOES NOT EXERCISE SUCH  
FUNCTIONS AND IS THEREFORE AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT.

4. ON THE DATE OF THE MAKING OF THE APPLICATION THE OCCUPATIONAL  
CLASSIFICATIONS THAT WERE INCLUDED IN THE ABOVE DESCRIBED BARGAINING UNIT  
WERE NIGHT CLEANER, DAY SERVICEMAN, ELECTRICIAN, ELECTRICIAN'S HELPER,  
PAINTER AND ATTENDANT. ROWLAND G. HILL, THE REGIONAL DIRECTOR OF THE  
APPLICANT FOR REGION No. 11, WHICH INCLUDES THE WHOLE OF CANADA, TESTIFIED  
THAT PERSONS IN THESE AND OTHER CATEGORIES HAVE BEEN ADMITTED TO FULL  
MEMBERSHIP AND HAVE ALL THE RIGHTS AND PRIVILEGES OF A FULL MEMBER. IN  
SUPPORT OF THIS POSITION THE APPLICANT FILED A MEMORANDUM OF AGREEMENT  
BETWEEN THE CANADIAN NATIONAL RAILWAYS HOTEL DEPARTMENT AND THE INTER-  
NATIONAL UNION OF OPERATING ENGINEERS, LOCAL 857, GOVERNING EMPLOYEES OF  
THE MACDONALD HOTEL, EDMONTON, ALBERTA. THIS MEMORANDUM OF AGREEMENT,  
SIGNED NOVEMBER 9, 1966, COVERS ENGINEERS, PLUMBERS, ELECTRICIANS,  
MACHINISTS, CARPENTERS, PAINTERS AND MAINTENANCE MEN. MR. HILL TESTIFIED  
THAT THIS AGREEMENT WAS PRECEDED BY A CERTIFICATION FROM THE CANADA LABOUR  
RELATIONS BOARD AND THAT THE PERSONS COVERED HAD FULL MEMBERSHIP IN THE  
UNION. IT WAS ANNOUNCED AT THE SECOND HEARING THAT THE LETTER OF MAY 2,  
1967 FROM ROWLAND G. HILL ADDRESSED TO THE BOARD WOULD NOT BE CONSIDERED BY  
THE BOARD IN REACHING ITS DECISION.

5. IN HIGH-SCHOOL BOARD OF EASTVIEW, O.L.R.B. MONTHLY REPORT, MARCH, 1967, P. 957, THE BOARD CERTIFIED THE PRESENT APPLICANT FOR ALL EMPLOYEES OF THE SAID HIGH SCHOOL BOARD WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. THE CLASSIFICATIONS INVOLVED IN THE BARGAINING UNIT IN THAT CASE INCLUDED STATIONARY ENGINEERS AND CLEANERS. THE RESPONDENT IN THAT CASE QUESTIONED THE RIGHT OF THE APPLICANT, AS A CRAFT UNION, TO BE CERTIFIED AS BARGAINING AGENT FOR EMPLOYEES OTHER THAN OPERATING ENGINEERS ENGAGED IN THE STATIONARY ENGINEERS CRAFT OR THE HOISTING AND PORTABLE ENGINEERS CRAFT (HEREINAFTER REFERRED TO AS "ENGINEERS"). THE DECISION OF THE BOARD STATED IN PART:

IT IS A MATTER OF RECORD THAT THE BOARD, IN NOT AN INCONSIDERABLE NUMBER OF CASES, HAS CERTIFIED THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND LOCALS OF THE INTERNATIONAL AS BARGAINING AGENTS FOR "ALL EMPLOYEE" UNITS COVERING PERSONS EMPLOYED IN WIDELY DIVERSIFIED OCCUPATIONAL OCCUPATIONS, INCLUDING THOSE IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT. IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, WE CAN ONLY CONCLUDE THAT THE RESPONSIBLE OFFICIALS OF THE APPLICANT HAVE PLACED AN INTERPRETATION ON THE JURISDICTIONAL PROVISIONS OF ITS CONSTITUTION WHICH IS BROAD ENOUGH TO MAKE ALL OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WHICH THE APPLICANT IS SEEKING, ELIGIBLE FOR MEMBERSHIP.

AFTER CONSIDERING CERTAIN EARLIER BOARD DECISIONS, THE BOARD WENT ON TO STATE:

IN THE INSTANT CASE, HOWEVER, THE BOARD DOES NOT RELY SOLELY ON THE LANGUAGE OF THE CONSTITUTION. IN LIGHT OF THE RECORD OF ORGANIZING PRACTICES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND AT LEAST SOME OF ITS LOCAL UNIONS, ALL OF WHOM, INCLUDING THE APPLICANT IN THIS CASE, DERIVE THEIR JURISDICTION FROM THE CONSTITUTION OF THE INTERNATIONAL, THE BOARD FINDS THAT THE EMPLOYEES IN THE PROPOSED UNIT ARE ELIGIBLE FOR MEMBERSHIP IN THE APPLICANT. THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS JURISDICTION TO REPRESENT THE EMPLOYEES IN THE UNIT WHICH IT IS SEEKING.

THIS CASE CLEARLY STATES THAT THE APPLICANT IS ENTITLED TO BE CERTIFIED UNDER THE LABOUR RELATIONS ACT AS A BARGAINING AGENT FOR EMPLOYEES OTHER THAN ENGINEERS. THE EVIDENCE IN THIS CASE SERVES TO EMPHASIZE "THE ORGANIZING PRACTICES" OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND ITS LOCALS REFERRED TO IN THE ABOVE QUOTATION.

6. COUNSEL FOR THE RESPONDENT SUBMITS, HOWEVER, THAT THE DECISION OF THE BOARD IN THE HIGH SCHOOL BOARD OF EASTVIEW CASE IS WRONG IN LAW AND OUGHT NOT TO BE FOLLOWED. COUNSEL PRESENTED A VERY ABLE ARGUMENT AND CITED NUMEROUS COURT CASES AND DECISIONS OF THIS BOARD IN SUPPORT OF HIS CONTENTIONS. THESE HAVE BEEN CAREFULLY CONSIDERED BY THE BOARD. IT IS CLEAR, HOWEVER, THAT HIS SUBMISSION IS BASED ON THE ASSUMPTION THAT, IN DETERMINING MEMBERSHIP IN A TRADE UNION FOR THE PURPOSES OF SECTION 7 OF THE LABOUR RELATIONS ACT, THE BOARD IS BOUND BY THE PROVISIONS OF THE PARTICULAR UNION'S CONSTITUTION. WHAT THEN IS THE POSITION OF THE BOARD?

7. ON FEBRUARY 16, 1951, THE BOARD ISSUED A STATEMENT OF POLICY IN THE FOLLOWING TERMS: (SEE VOL. 2 C.C.H. CANADIAN LABOUR LAW REPORTER, ¶60,981)

#### STATEMENT OF POLICY

BY

ONTARIO LABOUR RELATIONS BOARD

#### APPLICATION FOR CERTIFICATION - MEMBERS

UPON AN APPLICATION FOR CERTIFICATION THE BOARD WILL REQUIRE THE APPLICANT TO SUBMIT EVIDENCE THAT EACH EMPLOYEE SAID TO BE A MEMBER OF THE APPLICANT HAS

(1) APPLIED FOR MEMBERSHIP IN THE APPLICANT,

AND

(2) INDICATED HIS ACCEPTANCE OF MEMBERSHIP AND HIS ASSUMPTION OF THE RESPONSIBILITIES OF MEMBERSHIP

(A) BY PAYING TO THE APPLICANT, ON HIS OWN BEHALF, AN AMOUNT OF AT LEAST \$1.00 IN RESPECT OF THE PRESCRIBED INITIATION FEE OR MONTHLY DUES OF THE APPLICANT,

OR

(B) BY PRESENTING HIMSELF FOR INITIATION OR BY TAKING THE MEMBERS' OBLIGATION, OR BY DOING SOME OTHER ACT WHICH, IN THE OPINION OF THE BOARD, IS CONSISTENT WITH MEMBERSHIP IN THE APPLICANT.

FOLLOWING THE ISSUANCE OF THIS STATEMENT THE BOARD HAS ACCEPTED, INTER ALIA, AS EVIDENCE OF MEMBERSHIP IN A TRADE UNION, A SIGNED APPLICATION FOR MEMBERSHIP ACCOMPANIED BY A RECEIPT, SIGNED BY THE COLLECTOR AND COUNTERSIGNED BY THE PAYER, INDICATING PAYMENT OF AT LEAST ONE DOLLAR TOWARDS INITIATION FEES



OR MONTHLY DUES. THIS STATEMENT OF POLICY WAS CONSIDERED BY McRUER C.J.H.C. IN RE JACKSON ET AL AND ONTARIO LABOUR RELATIONS BOARD ET AL., [1955] O.W.N. 130, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, 1955-1959, ¶15,002, AND THERE IS NO INDICATION IN THE LEARNED CHIEF JUSTICE'S REASONS THAT HE CONSIDERED THAT THE BOARD WAS IN ERROR IN ACCEPTING SUCH STANDARDS AS EVIDENCE OF MEMBERSHIP IN A TRADE UNION FOR THE PURPOSES OF SECTION 7 OF THE LABOUR RELATIONS ACT.

8. AN EXAMINATION OF ARTICLE X OF THE CONSTITUTION OF THE APPLICANT MAKES IT QUITE CLEAR THAT A PERSON WHO SIGNS AN APPLICATION FOR MEMBERSHIP AND PAYS A DOLLAR DOES NOT THEREBY BECOME A MEMBER OF THE UNION WITHIN THE MEANING OF THE CONSTITUTION. THERE CAN BE NO QUESTION, HAVING REGARD TO THE BOARD'S EXTENSIVE EXPERIENCE IN THESE MATTERS, THAT THE SAME IS TRUE OF MOST OTHER UNION CONSTITUTIONS.

9. THE POINT OF ALL THIS, OF COURSE, IS THAT THERE IS A LONG-STANDING POLICY OF THE BOARD UNDER WHICH IN DECIDING WHETHER FOR PURPOSES OF SECTION 7 OF THE ACT A PERSON IS A MEMBER OF AN APPLICANT TRADE UNION, THE BOARD HAS SET ITS OWN STANDARD OF MEMBERSHIP AND HAS NOT CONSIDERED CONSTITUTIONS OF APPLICANT UNIONS EXCEPT IN THE CIRCUMSTANCES SET OUT BELOW. ONE OF THE MAIN REASONS FOR THIS PARTICULAR POLICY IS THE BOARD'S DESIRE TO MAINTAIN A UNIFORM MINIMUM STANDARD OF MEMBERSHIP. THE BOARD HAS LONG BEEN OF THE OPINION, AND IT IS SO STATED IN MANY CASES (SEE, FOR EXAMPLE, THE JACKSON CASE, SUPRA) THAT IT IS DESIRABLE TO HAVE SOME FINANCIAL SACRIFICE OR THE DOING OF SOME OTHER ACT WHICH SERVES AS CONFIRMATORY EVIDENCE OF THE DESIRE OF A PERSON, SIGNING AN APPLICATION CARD, TO BECOME A MEMBER OF THE UNION. WHILE UNION CONSTITUTIONS USUALLY REQUIRE, INTER ALIA, THE PAYMENT OF AN INITIATION FEE AND MONTHLY DUES THEREAFTER, THERE IS NOTHING TO PREVENT A UNION FROM CHANGING ITS CONSTITUTION IN ORDER TO MAKE IT POSSIBLE TO WAIVE AN INITIATION FEE FOR THE PURPOSE OF AN ORGANIZATIONAL DRIVE, SO THAT THE MERE SIGNING OF AN APPLICATION CARD OR EVEN AN AUTHORIZATION CARD WOULD, FOR THE PURPOSES OF THE DRIVE AND SUBSEQUENT APPLICATION FOR CERTIFICATION TO THE BOARD, BE CONSIDERED MEMBERSHIP IN THE TRADE UNION. IN SUCH CIRCUMSTANCES, IF THE BOARD WERE BOUND TO FOLLOW THE UNION'S AMENDED REQUIREMENTS FOR MEMBERSHIP, IT WOULD BE UNABLE TO INSIST ON A FINANCIAL SACRIFICE BY AN APPLICANT FOR MEMBERSHIP IN THE UNION.

10. FURTHERMORE, THE SITUATION MIGHT WELL DEVELOP WHERE TWO UNIONS, EACH SEEKING TO ORGANIZE A GROUP OF EMPLOYEES FOR THE PURPOSE OF APPLYING TO THE BOARD FOR CERTIFICATION, HAVE DIFFERENT REQUIREMENTS FOR MEMBERSHIP. IN ONE, THE SIGNING OF AN APPLICATION CARD WOULD MEET ITS REQUIREMENTS, WHILE IN THE OTHER, PAYMENT OF A SUBSTANTIAL SUM TOWARDS THE INITIATION FEE WOULD BE NECESSARY BEFORE ITS REQUIREMENTS FOR MEMBERSHIP WERE MET. THIS WOULD GIVE THE FIRST UNION A DISTINCT ADVANTAGE IN ITS ORGANIZATIONAL CAMPAIGN AND THE BOARD WOULD NOT BE ABLE TO MAINTAIN ITS OWN UNIFORM STANDARD OF MEMBERSHIP.

11. IT IS FOR THESE REASONS THEN, THAT, IN ASCERTAINING WHETHER EMPLOYEES ARE "MEMBERS" FOR THE PURPOSES OF SECTION 7 OF THE ACT, THE BOARD HAS FELT IT DESIRABLE TO SET A UNIFORM STANDARD RATHER THAN BE BOUND BY REQUIREMENTS IN UNION CONSTITUTIONS FOR BECOMING A MEMBER OF THE UNION.

IT IS ARGUED, HOWEVER, THAT THE BOARD MUST LOOK TO THE CONSTITUTION OF A UNION FOR THE PURPOSE OF CONSTRUING THE SAME WORD, "MEMBERS" QUA THE ELIGIBILITY OF AN APPLICANT TO BECOME A MEMBER IN A TRADE UNION. THIS, IN OUR VIEW, WOULD BE ENTIRELY INCONSISTENT WITH BOARD POLICY REGARDING REQUIREMENTS FOR MEMBERSHIP AND WE ARE NOT PREPARED TO DEPART FROM THIS LATTER POLICY. IN OTHER WORDS, WHETHER THE WORD "MEMBERS" IN SECTION 7 OF THE ACT IS VIEWED FROM THE POINT OF VIEW OF UNION CONSTITUTION REQUIREMENTS FOR BECOMING A MEMBER OR UNION CONSTITUTION PROVISIONS RESPECTING ELIGIBILITY, THE BOARD, CONSISTENT WITH ITS LONG-STANDING POLICY, DOES NOT REGARD ITSELF AS BOUND BY SUCH REQUIREMENTS OR PROVISIONS WHEN INTERPRETING THE WORD "MEMBERS" IN SECTION 7 OF THE ACT. CONSEQUENTLY, THERE IS NO NEED TO DEAL WITH THE ARGUMENT OF COUNSEL FOR THE RESPONDENT ON THIS POINT BECAUSE IT IS BASED ON THE PREMISE THAT THE BOARD IS SO BOUND.

12. THE RESPONDENT, HOWEVER, ALSO ARGUES THAT THE BOARD DOES IN FACT LOOK TO UNION CONSTITUTIONS IN DETERMINING THE "ELIGIBILITY" QUESTION AND THAT IT IS ONLY WHEN THERE IS DOUBT AS TO THE MEANING OF THE CONSTITUTION THAT THE BOARD WILL LOOK TO THE INTERPRETATION PLACED ON THE PROVISIONS IN QUESTION BY RESPONSIBLE OFFICIALS OF THE UNION AS EVIDENCED BY THE ORGANIZING PRACTICES OF THE UNION. WHILE EARLIER CASES SUCH AS GAYMER AND OULTRAM, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-1954, ¶17073, C.L.S. 76-429, AND JOHN E. RIDDELL AND SON LTD., 2 C.L.S. 76-564, MAY BE CONSTRUED AS SUPPORTING THIS POINT OF VIEW, THEY MUST BE READ IN THE LIGHT OF LATER DECISIONS WHICH INDICATE IMPORTANT REFINEMENTS AND DEVELOPMENTS OF EARLIER BOARD POLICY. IN ORDER TO SET THE RECORD STRAIGHT, WE THINK IT ADVISABLE TO SET FORTH THE PRESENT POLICY OF THE BOARD.

13. UNQUESTIONABLY IN CONSIDERING THE "ELIGIBILITY" PROBLEM; THE BOARD HAS TAKEN INTO CONSIDERATION THE CONSTITUTION OF THE PARTICULAR UNION IN QUESTION. IT IS ONE OF THE FACTORS WHICH THE BOARD LOOKS AT IN DETERMINING WHETHER A PERSON IS A MEMBER OF THE UNION. THUS, IF THERE IS A CLEAR-CUT PROHIBITION OR EXPRESS EXCLUSION WITH RESPECT TO A CERTAIN CLASS OF PERSONS (SEE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126, ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 170), THE BOARD WILL REFUSE TO CERTIFY AN APPLICANT UNION IF THE CLASS OF PERSONS IN QUESTION IS TO BE INCLUDED IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE REASON FOR THIS IS THAT A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES. TO THAT EXTENT AND FOR THAT PURPOSE, THEN, THE BOARD DOES HAVE REGARD TO UNION CONSTITUTIONS.

14. ON THE OTHER HAND, THE BOARD HAS ALSO SAID IF THERE IS NO EXPRESS EXCLUSION (CF. ALDERSHOT CONTRACTORS EQUIPMENT RENTALS LIMITED, SUPRA, N. D. APPEGATE LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, P. 104) OF A PARTICULAR CLASS OR CLASSES OF EMPLOYEES AFFECTED BY THE APPLICATION, IT WILL NOT ENTERTAIN AN OBJECTION TO THE APPLICATION BASED ON THE ELIGIBILITY

PROVISIONS OF AN APPLICANT UNION'S CONSTITUTION. IN A CASE OF THIS NATURE THE BOARD MAY ALSO HAVE REGARD TO THE INTERPRETATION WHICH RESPONSIBLE OFFICIALS OF THE UNION HAVE PLACED ON THE PROVISIONS OF THE CONSTITUTION AND TO THE PRACTICE OF THE UNION WITH RESPECT TO THE ADMISSION OF PERSONS AS MEMBERS. SEE WAYNE PUMP CANADA LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER, 1966, P. 489; JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564.

15. FURTHERMORE, EVEN WHERE THERE IS AN EXPRESS EXCLUSION IN A UNION CONSTITUTION, IT IS IMPLICIT IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, THAT THE INTERPRETATION PLACED ON THE CONSTITUTION BY THE UNION'S RESPONSIBLE OFFICERS OR PROOF OF UNEQUIVOCAL PAST PRACTICES OF ADMISSION AS MEMBERS OF PERSONS COMING WITHIN THE EXCLUSIONARY CLASS WILL OVERCOME THE LANGUAGE OF THE CONSTITUTION. THERE IS NO DOUBT IN OUR MINDS THAT THIS ACCURATELY REFLECTS BOARD POLICY AND, FURTHER, THAT THE HIGH SCHOOL BOARD OF EASTVIEW CASE IS IN LINE WITH THIS POLICY.

16. IN SUM, THEN, IN DETERMINING WHETHER AN APPLICANT TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN AN APPROPRIATE BARGAINING UNIT, WHAT THE BOARD IS CONCERNED WITH IS WHETHER THE UNION ACCORDS ALL SUCH EMPLOYEES FULL RIGHTS AND PRIVILEGES AS MEMBERS. IF THE EVIDENCE SUPPORTS THIS CONCLUSION, THEN THE BOARD IS PREPARED TO FIND THAT SUCH EMPLOYEES ARE ELIGIBLE TO BECOME MEMBERS (AND, DEPENDING ON THE EVIDENCE, THAT THEY ARE MEMBERS) FOR THE PURPOSES OF SECTION 7 OF THE ACT AND, FURTHER, THAT THE TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN THE UNIT. WE HASTEN TO ADD, HOWEVER, THAT IF IT SHOULD SUBSEQUENTLY COME TO LIGHT THAT EMPLOYEES IN THE BARGAINING UNIT ARE NOT BEING ACCORDED FULL STATUS AS MEMBERS OF THE UNION, THEN, NATURALLY, THE BOARD WOULD HAVE TO REVIEW ITS DECISION IN THE PARTICULAR CASE AND WOULD BE OBLIGED TO TAKE THIS INTO ACCOUNT IN SUBSEQUENT CASES. HOWEVER, THE POSSIBILITY THAT THIS MAY OCCUR IN THE FUTURE IS NO GROUND, IN OUR VIEW, FOR WITHHOLDING BARGAINING RIGHTS IN ANY PARTICULAR CASE.

17. THERE IS PERHAPS ONE OTHER MATTER WHICH SHOULD BE MENTIONED, EVEN THOUGH, APART FROM IT, WE WOULD HAVE REACHED THE SAME CONCLUSION. THE BOARD MEMBERS, EXPERIENCED AS THEY ARE IN LABOUR RELATIONS, ARE FULLY AWARE OF THE FACT THAT THERE EXISTS THROUGHOUT THE PROVINCE A SUBSTANTIAL NUMBER OF COLLECTIVE BARGAINING RELATIONSHIPS IN WHICH UNIONS ARE THE BARGAINING AGENTS FOR EMPLOYEES WHO ARE NOT NORMALLY REPRESENTED BY SUCH UNIONS. IN OTHER WORDS, WHAT IS BEFORE US IN THIS CASE IS FAIRLY COMMONPLACE IN THE PROVINCE WITH RESPECT TO A NUMBER OF DIFFERENT UNIONS. MANY OF THE COLLECTIVE AGREEMENTS IN QUESTION REQUIRE UNION MEMBERSHIP AS A CONDITION OF EMPLOYMENT. IF THE ARGUMENT OF THE RESPONDENT IN THIS CASE WERE ADOPTED, THE EFFECT ON MANY ESTABLISHED COLLECTIVE BARGAINING RELATIONSHIPS IN THE PROVINCE WOULD BE CHAOTIC.

18. FINALLY, THE HEADING OF THE APPLICATION CARDS SIGNED BY THE EMPLOYEES IN THIS CASE READS:



STATIONARY LOCAL UNION No. \_\_\_\_\_

OF THE

INTERNATIONAL UNION OF OPERATING ENGINEERS

EXAMINATION OF THE CARDS FILED REVEALS THAT, WITH ONE EXCEPTION, NO LOCAL UNION NUMBER HAS BEEN INSERTED IN THE SPACE PROVIDED THEREFOR. HOWEVER, ATTACHED TO EACH CARD IS AN OFFICIAL RECEIPT FOR \$1.00 TOWARDS INITIATION FEES FOR LOCAL UNION 796 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS. EACH RECEIPT IS COUNTERSIGNED BY THE EMPLOYEE PAYING THE \$1.00. WHILE THE STATEMENT OF POLICY RESPECTING MEMBERSHIP EVIDENCE (SUPRA PAGE 3) REQUIRES EVIDENCE THAT EACH EMPLOYEE SAID TO BE A MEMBER OF THE APPLICANT HAS "APPLIED FOR MEMBERSHIP IN THE APPLICANT", IT IS THE OPINION OF CHAIRMAN G. W. REED AND BOARD MEMBER O. HODGES THAT, READING THE CARD AND RECEIPT TOGETHER, IT IS CLEAR THAT THE EMPLOYEES IN THIS CASE INTENDED TO APPLY FOR MEMBERSHIP IN LOCAL UNION 796, THE APPLICANT TRADE UNION IN THIS CASE. BOARD MEMBER H. F. IRWIN DOES NOT AGREE WITH THE CONCLUSION REACHED IN THIS PARAGRAPH FOR THE REASONS SET OUT BELOW. IT FOLLOWS THEREFROM THAT HE IS ALSO NOT IN AGREEMENT WITH PARAGRAPHS 19 AND 20.

19. IN THE RESULT, THEREFORE, AND HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 28, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: AUGUST 29, 1967.

1. I ACTIVELY PARTICIPATED WITH THE CHAIRMAN AND BOARD MEMBER O. HODGES IN THE CONSIDERATION AND DISCUSSION OF THE ISSUES IN THIS CASE AND IN WRITING THE REASONS FOR DECISION AS SET OUT IN PARAGRAPHS 1 TO 17 ABOVE. I CONCUR IN THIS PORTION OF THE BOARD'S DECISION.

2. I AM OBLIGED TO DISSENT, HOWEVER, IN RESPECT OF ACCEPTING THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION AND REFERRED TO IN PARAGRAPHS 18 AND 19 OF THE DECISION. THERE WERE 32 PERSONS IN THE BARGAINING UNIT AS OF THE DATE OF APPLICATION, FEBRUARY 28, 1967. THE UNION SUBMITTED 21 APPLICATIONS FOR MEMBERSHIP ALL OF WHICH CORRESPOND WITH NAMES ON THE LIST OF EMPLOYEES SUPPLIED BY THE RESPONDENT.

3. ONLY 1 OF THE 21 MEMBERSHIP APPLICATION CARDS HAS THE LOCAL UNION NUMBER No. 796, INSERTED IN THE SPACE PROVIDED THEREFOR AS SHOWN IN PARAGRAPH 18 OF THE BOARD'S DECISION. ON THE OTHER 20 CARDS, THERE



IS NO MENTION WHATSOEVER OF THE NUMBER OF THE LOCAL UNION TO WHICH APPLICATION FOR MEMBERSHIP IS PRESUMABLY MADE.

4. THE BOARD'S STATEMENT OF POLICY IN RESPECT OF MEMBERSHIP IN APPLICATIONS FOR CERTIFICATION AS SET OUT IN PARAGRAPH 7 IN THE BOARD'S DECISION, SUPRA, CLEARLY STATES THAT UPON AN APPLICATION FOR CERTIFICATION THE BOARD WILL REQUIRE THE APPLICANT TO SUBMIT EVIDENCE THAT EACH EMPLOYEE SAID TO BE A MEMBER OF THE APPLICANT HAS (1) APPLIED FOR MEMBERSHIP IN THE APPLICANT AND (2) INDICATED HIS ACCEPTANCE OF MEMBERSHIP AND HIS ASSUMPTION OF THE RESPONSIBILITY OF MEMBERSHIP BY PAYING TO THE APPLICANT, ON HIS OWN BEHALF, AN AMOUNT OF AT LEAST \$1.00 IN RESPECT OF THE PRESCRIBED INITIATION FEE OR MONTHLY DUES OF THE APPLICANT. THESE ARE TWO SEPARATE AND DISTINCT ACTS REQUIRED OF THE EMPLOYEE. HE CAN'T PERFORM THE SECOND REQUIREMENT UNTIL HE HAS COMPLETED THE FIRST REQUIREMENT, THAT IS, MADE APPLICATION FOR MEMBERSHIP IN THE APPLICANT. IN THE INSTANT CASE, THE APPLICANT IS LOCAL UNION 796 AND THERE IS NOTHING WHATSOEVER ON THE 20 APPLICATION CARDS TO IDENTIFY THEM AS APPLICATIONS IN THIS OR ANY OTHER LOCAL UNION NOR CAN IT BE SAID THAT THEY ARE APPLICATIONS FOR MEMBERSHIP IN THE INTERNATIONAL UNION.

5. WITH RESPECT, I CANNOT AGREE WITH MY COLLEAGUES THAT THE NUMBER OF THE LOCAL UNION ON THE RECEIPT OVERCOMES THE DEFECT IN THE APPLICATION FOR MEMBERSHIP CARD. A PERSON CANNOT INDICATE HIS ACCEPTANCE OF MEMBERSHIP AND HIS ASSUMPTION OF THE RESPONSIBILITIES OF MEMBERSHIP UNTIL THE APPLICATION FOR MEMBERSHIP IN THE APPLICANT UNION HAS FIRST BEEN MADE. THE APPLICATION FOR MEMBERSHIP IS THE PRIMARY DOCUMENT. THE RECEIPT IS A SUBSIDIARY DOCUMENT AND IS NOT CAPABLE OF AMENDING ANY DEFECT IN THE APPLICATION FOR MEMBERSHIP, PER SE.

6. FOR THESE REASONS, I MUST FIND THAT THE EVIDENCE OF MEMBERSHIP DOES NOT MEET THE BOARD'S REQUIREMENTS AND I WOULD HAVE DISMISSED THE APPLICATION.

12877-66-R: FOOD HANDLERS LOCAL 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL - CIO, CLC (APPLICANT) V. CENTRAL SUPER MARKETS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT HEARING: L. V. PATHE AND T. B. SHELDON FOR THE APPLICANT, AND D. G. PYLE AND R. KILROY FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
R. W. TEAGLE: AUGUST 2, 1967.

...

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF-SCHOOL HOURS

AND DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THAT THE EXCLUSION OF STUDENTS EMPLOYED IN OFF-SCHOOL HOURS IS BY REASON OF AGREEMENT OF THE PARTIES.

4. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN, DATED THE 12TH DAY OF JUNE, 1967, AND THE WRITTEN REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT ERIC EATON, GUNTHER CHRISTIEN AND PAUL POISSON (THE EVIDENCE WITH RESPECT TO GUNTHER CHRISTIEN APPLIES TO THE LATTER BY AGREEMENT OF THE PARTIES) EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT.

5. THE UNCONTRADICTED EVIDENCE CONTAINED IN THE EXAMINER'S REPORT INDICATES THAT THE ABOVE PERSONS, WHO HAD CLASSIFICATIONS WHICH ARE GENERALLY FOUND BY THE BOARD TO BE INCLUDED IN THE BARGAINING UNIT IN STORES SUCH AS THE RESPONDENT HEREIN OPERATES, HIRE AND FIRE EMPLOYEES, GRANT TIME OFF TO EMPLOYEES, EXERCISE DISCRETION WITH RESPECT TO STARTING RATES AND INCREASES, AND SPEND A PREPONDERANT PORTION OF THEIR TIME SUPERVISING AND MANAGING THEIR DEPARTMENTS.

6. ROBERT HYNDMAN, A FORMER PRODUCE MANAGER, WHO HAD CEASED TO BE AN EMPLOYEE PRIOR TO THE DATE OF APPLICATION, WAS CALLED TO GIVE EVIDENCE WITH RESPECT TO HIS DUTIES AND RESPONSIBILITIES WHILST SO EMPLOYED. THE POSITION IS NOW HELD BY KEN DION, AND THE EVIDENCE OF HYNDMAN WOULD APPEAR TO HAVE BEEN APPLIED TO DION BY AGREEMENT OF THE PARTIES. HAVING REGARD TO THIS EVIDENCE, THE BOARD FINDS THAT KEN DION DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS INCLUDED IN THE BARGAINING UNIT.

7. HAVING REGARD TO THE EVIDENCE OF THE SAID REPORT, THE BOARD FINDS THAT DAGMAR JUNG FALLS WITHIN THE DEFINITION OF OFFICE EMPLOYEES AND IS EXCLUDED FROM THE BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 28TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER D. B. ARCHER:

AUGUST 2, 1967.

I DISSENT. I WOULD HAVE PUT THOSE PERSONS CALLED DEPARTMENT MANAGERS IN THE BARGAINING UNIT. THE EROSION OF THE BARGAINING UNIT IN OPERATIONS OF THIS KIND BY NAMING PRACTICALLY ALL FULL TIME EMPLOYEES AS PRODUCE MANAGERS, GROCERY MANAGERS AND IN THIS CASE A SERVICE MANAGER

MAKES COLLECTIVE BARGAINING ALMOST IMPOSSIBLE.

THERE IS ALSO ONE OFFICE GIRL. NOT TO INCLUDE HER IN THIS UNIT MEANS SHE IS FOREVER DENIED THE RIGHT TO COLLECTIVE BARGAINING, SINCE A SINGLE EMPLOYEE CANNOT BE CERTIFIED. I WOULD HAVE, IN THESE CIRCUMSTANCES, INCLUDED HER IN THE UNIT.

12923-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JONES & LAUGHLIN MINING COMPANY, LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: D. M. STOREY FOR THE APPLICANT,  
PURDY CRAWFORD FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:

AUGUST 18, 1967.

. . .

2. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE, TECHNICAL AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS ADAMS MINE IN THE TOWNSHIP OF BOSTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE CONFIDENTIAL SECRETARY TO EACH OF THE FOLLOWING: GENERAL MANAGER, MANAGER OF FINANCIAL CONTROL AND PERSONNEL MANAGER, EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STUDENTS EMPLOYED AS PART OF A SCHOOL INDUSTRY CO-OPERATIVE WORK STUDY PROGRAM, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND SECURITY GUARDS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT NORMAN COATES, A PERSON CLASSIFIED AS RESIDENT ENGINEER, AND ALFRED KING, A PERSON CLASSIFIED AS SAFETY ADMINISTRATOR, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

4. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT JAMES NICHOLLS, A PERSON CLASSIFIED AS INDUSTRIAL ENGINEER, IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT.

5. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JULY 18TH, 1967, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, FOR THE PURPOSE OF CLARITY, WE DECLARE THAT LLOYD DOUPE, A PERSON CLASSIFIED AS CHIEF WAREHOUSEMAN, AND ALLEN MURPHY, A

PERSON CLASSIFIED AS ASSISTANT MINING ENGINEER, DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD FURTHER DECLARES THAT KEITH OLIVER, A PERSON CLASSIFIED AS MINING ENGINEER, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD WILL NOT PROCESS THIS APPLICATION FURTHER UNTIL SUCH TIME AS THE SUPREME COURT OF ONTARIO HAS DEALT WITH THE MOTION MADE ON BEHALF OF THE RESPONDENT IN THIS MATTER.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

AUGUST 18, 1967.

I DISSENT. ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD AND THE REPRESENTATIONS OF THE PARTIES, I WOULD HAVE FOUND THAT ALLEN MURPHY EXERCISES MANAGERIAL FUNCTIONS AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

13260-67-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL CIO CLC (APPLICANT) V. N. & D SUPERMARKET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT HEARING: L. A. MACLEAN AND M. J. BRIERLEY FOR THE APPLICANT, NORMAN L. MATHEWS, Q.C., AND CLIFFORD N. SUTTS FOR THE RESPONDENT, AND J. BARNEY REAUME FOR A GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
F. W. MURRAY: AUGUST 2, 1967.

1. DURING THE COURSE OF ITS INVESTIGATION OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT IT APPEARED TO THE BOARD THAT RONALD DAVID TAYLOR, ONE OF THE EMPLOYEES OF THE RESPONDENT, HAD NOT PAID THE \$1.00 INITIATION FEE REQUIRED FOR MEMBERSHIP IN THE APPLICANT UNION. THE PAYMENT OF THAT AMOUNT FOR THAT PURPOSE WAS INDICATED ON THE MEMBERSHIP CARD FILED ON BEHALF OF TAYLOR. THE BOARD CONDUCTED A PRELIMINARY HEARING INTO THE MATTER AND THEN SET THE CASE DOWN FOR CONTINUATION OF HEARING.

2. THE BOARD SUMMONED RONALD DAVID TAYLOR, THE EMPLOYEE CONCERNED, AND MATHEW JOHN BRIERLEY, INTERNATIONAL ORGANIZER FOR THE APPLICANT UNION, TO GIVE TESTIMONY.



3. TAYLOR IDENTIFIED HIS SIGNATURE ON A COMBINED APPLICATION FOR MEMBERSHIP AND RECEIPT CARD, DATED MAY 25TH, 1967. THE CARD INDICATED THAT \$1.00 PAYMENT HAD BEEN MADE. BRIERLEY IDENTIFIED HIS OWN SIGNATURE ON THE CARD.

4. TAYLOR TESTIFIED THAT BRIERLEY CAME TO HIS HOME ON MAY 25TH, 1967, HE EXPLAINED TO TAYLOR THE PURPOSE OF HIS VISIT. THE CARD WAS FILLED OUT BY BRIERLEY AND SIGNED BY TAYLOR. IMMEDIATELY FOLLOWING THE SIGNING, BRIERLEY ASKED TAYLOR FOR THE DOLLAR. THE LATTER REPLIED THAT HE HAD NO MONEY THEN, BUT ASKED BRIERLEY IF HE WOULD COME BACK A WEEK LATER AT WHICH TIME TAYLOR WOULD HAVE SOME MONEY. BRIERLEY AGREED. WHEN HE LEFT HE TOOK THE CARD WITH HIM. TAYLOR TESTIFIED FURTHER THAT BRIERLEY DID NOT COME BACK ON THE APPOINTED DAY, BUT CAME TWO WEEKS AFTER THE FIRST VISIT. HE SAID THAT BRIERLEY ASKED HIM FOR THE DOLLAR. HE DID NOT GIVE ANY MONEY TO BRIERLEY. HE TOLD BRIERLEY HE HAD CHANGED HIS MIND ABOUT THE UNION AND ASKED FOR HIS CARD BACK. BRIERLEY, HE TESTIFIED, TOLD HIM HE HAD ALREADY SENT THE CARD TO TORONTO. TAYLOR STATED TO THE BOARD THAT HE WANTED THE CARD BACK SO THAT HE COULD DESTROY IT, TEAR IT UP.

5. TAYLOR TESTIFIED THAT WHEN BRIERLEY ASKED HIM WHY HE HAD CHANGED HIS MIND, HE TOLD HIM IT WAS BECAUSE "THE COMPANY HAS BEEN GOOD TO ME".

6. TAYLOR WAS SUBJECTED TO VIGOROUS CROSS-EXAMINATION, BUT REMAINED UNSHAKEN IN HIS TESTIMONY THAT HE HAD NOT PAID THE DOLLAR TO BRIERLEY OR ANYONE ELSE. HE WAS POSITIVE HE RECEIVED NOTHING IN THE NATURE OF A RECEIPT FROM BRIERLEY.

7. BRIERLEY HAS SPENT TWENTY YEARS AS A UNION ORGANIZER. HIS TESTIMONY WAS THAT HE CALLED ON TAYLOR THREE TIMES IN ORDER TO SIGN HIM UP FOR THE UNION. THE SECOND TIME HE CALLED AT TAYLOR'S HOME THE LATTER'S MOTHER ANSWERED HIS KNOCK ON THE DOOR AND ADVISED HIM TAYLOR WAS NOT AT HOME. THE THIRD CALL IS WHAT TAYLOR REFERS TO AS THE SECOND VISIT, SINCE HE KNEW NOTHING OF BRIERLEY'S SECOND CALL. THE TESTIMONY OF BRIERLEY THAT TAYLOR'S MOTHER ANSWERED THE DOOR HAS A SIGNIFICANCE WHICH WILL BECOME OBVIOUS LATER.

8. BRIERLEY FURTHER TESTIFIED THAT THE CARD IN QUESTION WAS SIGNED SOME TIME IN JUNE. HE SAID IT WAS MADE OUT THE FIRST TIME HE CALLED AT TAYLOR'S HOUSE, BUT WAS NOT SIGNED BECAUSE TAYLOR HAD NO MONEY TO PAY. THE NEXT TIME BRIERLEY SAW TAYLOR, HE TESTIFIED, THE DOLLAR WAS PAID TO HIM AND THE CARD WAS SIGNED. HE STATED THAT TAYLOR DID NOT ASK FOR THE CARD BACK AND THAT HE, BRIERLEY, GAVE HIM A RECEIPT FOR \$1.00.

9. BRIERLEY ALSO STATED IN HIS EVIDENCE IN CHIEF THAT HE ASKED TAYLOR IF HE HAD SPOKEN TO ANY OTHER EMPLOYEES ABOUT THE UNION AND THAT TAYLOR REPLIED THAT HE HAD NOT - THAT HE HAD CHANGED HIS MIND ABOUT THIS - THAT HE HAD TALKED TO THE COMPANY AND THAT HE WAS SATISFIED. BRIERLEY TOLD THE BOARD THAT TAYLOR WOULD NOT TELL HIM WHAT IT WAS ALL ABOUT.

10. IN CROSS-EXAMINATION BRIERLEY STATED THAT ON HIS FIRST VISIT TAYLOR HAD SAID HE WOULD SPEAK TO THE OTHER EMPLOYEES AND WHEN QUERIED

BY BRIERLEY ON THIS POINT TAYLOR HAD SAID, "NO, I CHANGED MY MIND". HE SAID, ACCORDING TO BRIERLEY'S TESTIMONY, HE HAD HAD A TALK WITH THE COMPANY AND THAT HE HAD MADE A SATISFACTORY ARRANGEMENT. AT THIS POINT IN HIS TESTIMONY, ON BEING PRESSED FOR DETAILS, BRIERLEY STATED, "TELL YOU THE TRUTH, I WAS GETTING ALL CONFUSED WITH THIS MAN". HE STATED THAT HE WENT TO HIS CAR AND TRIED TO FIGURE IT OUT.

11. BRIERLEY TESTIFIED THAT HE MADE OUT THE CARD ON THE FIRST VISIT. HE SAID HE COULD NOT REMEMBER THE DETAILS. HE DOES NOT REMEMBER IF THE \$1.00 WAS WRITTEN ONTO THE CARD ON THE FIRST VISIT. HE SAID THAT THE CARD WAS NOT SIGNED ON THE FIRST VISIT. HE DOES NOT REMEMBER WHEN THE DATE WAS PUT ON THE CARD. HE IS UNABLE TO RECOLLECT THE DATE OF THE SECOND VISIT WHEN TAYLOR WAS ABSENT. HE IS UNABLE TO RECOLLECT THE DATE OF THE THIRD VISIT WHEN, ACCORDING TO HIS TESTIMONY, THE MONEY WAS PAID. HE THOUGHT IT WOULD BE WITHIN A WEEK OF THE DATE OF APPLICATION - IN ANY EVENT, AFTER THE 6TH OR 7TH OF JUNE. HE TESTIFIED THAT HE KNEW THAT THE DATE ON THE CARD IS NOT THE DATE IT WAS SIGNED. HE SAID THAT TAYLOR'S CARD WAS ONE OF THE TWO HE HAD HAD SIGNED DURING THE UNION'S ORGANIZING CAMPAIGN.

12. WILLIAM GEORGE ATHERLEY WAS CALLED TO TESTIFY ON BEHALF OF BRIERLEY. HE IS AN EMPLOYEE OF STEINBERG'S IN WINDSOR AND, ACCORDING TO HIS TESTIMONY, IS A REPRESENTATIVE OF THE APPLICANT UNION HEREIN IN THAT CITY. HE TESTIFIED THAT HE ACCOMPANIED BRIERLEY TO TAYLOR'S HOUSE ABOUT THE LAST WEEK IN MAY. HE STATED THAT THEY MADE TWO CALLS. ON THE FIRST CALL THERE WAS NOBODY AT HOME. THE WITNESS WAS CROSS-EXAMINED CLOSELY AND VIGOROUSLY, BUT MAINTAINED THAT NOBODY WAS AT HOME. HE WAS QUITE MAINTAINED THAT NOBODY WAS AT HOME. HE WAS QUITE POSITIVE IN ASSERTING THAT NOBODY CAME TO THE DOOR. THIS WAS BRIERLEY'S SECOND VISIT TO THE TAYLOR'S HOUSE.

13. THE WITNESS WAS QUITE DEFINITE THAT THE VISIT TO TAYLOR'S HOUSE TOOK PLACE BETWEEN MAY 25TH AND MAY 30TH. HE STATED IN CROSS-EXAMINATION THAT THERE WAS NO DOUBT AT ALL ABOUT THAT.

14. ATHERLEY SAID THAT ON THE SECOND VISIT HE REMAINED IN THE CAR WHILE BRIERLEY WENT INTO THE HOUSE. HE TESTIFIED THAT BRIERLEY CAME OUT OF THE HOUSE WITH AN APPLICATION CARD AND A DOLLAR. HE STATED THAT HE PUT THE DOLLAR AND THE CARD ON THE SEAT THEN PICKED THEM UP AND PUT THEM IN AN ENVELOPE AND PLACED THEM IN THE GLOVE COMPARTMENT. HE ALSO STATED THAT HE, BRIERLEY, GOT THE DOLLAR AND THE CARD OUT OF HIS POCKET AND PUT THEM IN THE ENVELOPE. HE REPEATED, "THEY CAME OUT OF HIS POCKET". WHILE IN THE CAR HE PULLED THESE OUT OF HIS POCKET". THE WITNESS COULD NOT TESTIFY AS TO WHOSE NAME WAS ON THE CARD HE SAW.

15. THE ISSUE IN THIS MATTER IS A SERIOUS ONE. ITS RESOLUTION IS NOT MADE ANY MORE SIMPLE BY REASON OF THE FACT THAT IT FALLS TO BE DECIDED MAINLY UPON THE GROUNDS OF CREDIBILITY OF WITNESSES. THERE ARE, HOWEVER, SEVERAL ASPECTS OF THE TESTIMONY WHICH, VIEWED OBJECTIVELY AND REASONABLY, CAN BE OF ASSISTANCE IN REACHING A PROPER DECISION.

16. IT SHOULD BE NOTED THAT TAYLOR DID NOT INITIATE THE INQUIRY LEADING TO THE HEARING OF THIS MATTER. HE DID NOT APPROACH THE BOARD WITH AN ACCUSATION, BUT RATHER THE BOARD, AS INDICATED AT THE COMMENCEMENT OF THIS DECISION, CAME UPON THE SITUATION THROUGH INVESTIGATIONS ORIGINATED BY ITSELF. IT MIGHT ALSO BE OBSERVED THAT THE RESPONDENT COMPANY WAS NOT INVOLVED IN THE INITIATION OF THE INQUIRY. THE POINT IS THAT INITIALLY AT LEAST, TAYLOR WAS NOT OUT TO MAKE A CASE FOR HIMSELF.

17. THERE IS MATTER ARISING OUT OF THE TESTIMONY GIVEN BY TAYLOR AND BRIERLEY WITH RESPECT TO THEIR CONVERSATION WHEN THEY MET ON BRIERLEY'S THIRD VISIT TO THE HOUSE WHICH IS OF INTEREST. TAYLOR SAYS THAT HE TOLD BRIERLEY ON THAT OCCASION, ON BEING ASKED FOR THE DOLLAR, THAT HE HAD CHANGED HIS MIND ABOUT THE UNION AND GAVE AS HIS REASON FOR WANTING HIS CARD BACK THE FACT THAT THE COMPANY HAD BEEN GOOD TO HIM. BRIERLEY, IN THE COURSE OF HIS EVIDENCE, ATTRIBUTES A SIMILAR STATEMENT TO TAYLOR, BUT SAYS IT WAS MADE AS AN EXPLANATION TO HIM AS TO WHY TAYLOR HAD NOT APPROACHED OTHER EMPLOYEES. IT IS INDEED DIFFICULT TO BELIEVE THAT TAYLOR WOULD IN ONE AND THE SAME TRANSACTION, PAY THE \$1.00 TO BRIERLEY AND THEN SAY THAT HE HAD NOT SPOKEN TO OTHER EMPLOYEES BECAUSE THE COMPANY HAD BEEN GOOD TO HIM, TO USE TAYLOR'S WORDS, OR BECAUSE, TO USE BRIERLEY'S WORDS HE HAD HAD A TALK WITH THE COMPANY AND HAD MADE A SATISFACTORY ARRANGEMENT WITH IT. WE ARE COMPELLED TO ACCEPT TAYLOR'S EVIDENCE THAT THE STATEMENTS WERE MADE IN EXPLANATION OF THE REASONS WHY HE WOULD NOT PAY THE DOLLAR AND WANTED HIS CARD RETURNED.

18. IN ATHERLEY'S EVIDENCE THERE ARE SEVERAL MATTERS WHICH CAUSE CONCERN. HE TESTIFIED THAT HE HAD ACCOMPANIED BRIERLEY ON THE LATTER'S SECOND VISIT TO TAYLOR'S HOUSE. HIS TESTIMONY WAS THAT NOBODY WAS AT HOME ON THIS OCCASION. HE WAS TESTED AND RETESTED ON THIS POINT IN CROSS-EXAMINATION, BUT REMAINED POSITIVE THAT NO ONE HAD APPEARED AT THE DOOR IN ANSWER TO BRIERLEY. THIS IS, OF COURSE, IN DIRECT CONTRADICTION TO BRIERLEY'S EVIDENCE THAT TAYLOR'S MOTHER CAME TO THE DOOR AND SPOKE TO HIM. ATHERLEY ALSO TESTIFIED THAT HE ACCOMPANIED BRIERLEY ON THE THIRD VISIT. HE STATED THAT HE WAS WITH BRIERLEY FROM THE 25TH TO THE 30TH OF MAY, AND THAT THE TWO VISITS TOOK PLACE WITHIN THAT PERIOD. HE WAS QUITE DEFINITE ON THIS POINT. BRIERLEY, ON THE OTHER HAND WAS EQUALLY AS CERTAIN THAT THE THIRD CALL, WHEN ATHERLEY WAS ALLEGED TO HAVE BEEN WITH HIM, TOOK PLACE WITHIN A WEEK OF THE APPLICATION, THAT IS AFTER THE 6TH OR 7TH OF JUNE.

19. HAVING HEARD THE WITNESSES TESTIFY AND HAVING OBSERVED THE MANNER IN WHICH THEY GAVE THEIR TESTIMONY AND THEIR DEMEANOUR IN THE BOX, AND HAVING REVIEWED AND WEIGHED THE EVIDENCE, WE ARE COMPELLED TO ACCEPT TAYLOR'S EXPLANATION OF HIS SIGNATURE ON THE CARD AND TO PREFER HIS TESTIMONY OVER THAT OF THE OTHER WITNESSES.

20. IN THE RESULT THEN WE FIND THAT TAYLOR DID NOT PAY THE ONE DOLLAR INITIATION FEE TO BRIERLEY AND THAT THE LATTER FORWARDED TAYLOR'S CARD SHOWING RECEIPT OF THE DOLLAR TO THE UNION OFFICE IN TORONTO WITHOUT HAVING RECEIVED THE MONEY PAYMENT INDICATED ON ITS FACE. MR. BRIERLEY IS AN INTERNATIONAL ORGANIZER FOR THE APPLICANT UNION.



21. IN LIGHT OF ALL THE FOREGOING THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER D. B. ARCHER:

AUGUST 2, 1967.

THE FACTS OF THIS CASE ARE RELATIVELY SIMPLE. MR. RONALD DAVID TAYLOR ADMITS HE SIGNED A CARD FOR MEMBERSHIP IN THE UNION, THE CARD ALSO SHOWED THAT HE PAID A DOLLAR. MR. TAYLOR NOW DENIES PAYING THE DOLLAR. MR. BRIERLEY, THE COLLECTOR AND AN OFFICER OF THE UNION, INSISTS THAT HE DID PAY THE DOLLAR TO HIM. THEIR STORIES ARE SIMILAR, ON THE FIRST CALL MR. TAYLOR JOINED THE UNION BUT DID NOT HAVE THE DOLLAR AND ASKED MR. BRIERLEY TO RETURN ON ANOTHER DAY WHEN HE WOULD HAVE THE MONEY. BOTH AGREE THUS FAR AND IT IS FURTHER AGREED THAT BRIERLEY DID RETURN. IT IS AT THIS POINT THEIR STORIES CLASH. MR. TAYLOR SAID HE TOLD MR. BRIERLEY HE HAD CHANGED HIS MIND AND WAS NOT GOING TO PAY THE DOLLAR. MR. BRIERLEY INSISTS THAT TAYLOR SAID HE HAD CHANGED HIS MIND ABOUT ASSISTING IN THE ORGANIZING CAMPAIGN BUT HE GAVE HIM THE DOLLAR AS PROMISED AND SIGNED THE CARD. THE MAJORITY OF THE BOARD FEEL THIS IS MERELY A MATTER OF CREDIBILITY AND IF THE UNION ORGANIZER IS DISBELIEVED IT IS A MATTER OF DISMISSING THE UNION'S APPLICATION. I DISAGREE WITH MY COLLEAGUES, IF THERE IS DOUBT IN THEIR MIND AS TO WHO IS TELLING THE TRUTH THEY CAN USE THE CORROBORATIVE EVIDENCE OF A REPRESENTATION VOTE. IN THIS WAY THE EMPLOYEES CAN EXPRESS THEIR WISHES AS TO THE UNION OF THEIR CHOICE WHICH IS THE PRIMARY CONCERN OF THIS LABOUR BOARD.

WE KNOW FOR SURE THAT MR. TAYLOR LIED OR WAS MISTAKEN WHEN HE ADMITTED SIGNING A CARD SAYING HE PAID A DOLLAR. HE EITHER PAID IT, IN WHICH CASE HE IS MISTAKEN IN NOW SAYING HE DID NOT, OR HE DID NOT PAY IT AND HE LIED WHEN HE SIGNED THE CARD SAYING HE DID.

IN ALL CIRCUMSTANCES OF THIS CASE, REALIZING THE DIFFICULTY OF DECIDING ON CREDIBILITY OF EITHER WITNESS, I WOULD HAVE ORDERED A REPRESENTATION VOTE IN ORDER TO ALLOW THE EMPLOYEES THE RIGHT TO DECIDE FOR OR AGAINST THE UNION.

13381-67-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. L & W DISTRIBUTORS LIMITED, CARRYING ON BUSINESS AS N & D SUPERMARKET (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: L. V. PATHE FOR THE APPLICANT, AND  
B. M. W. PAULIN AND D. MANOJLOVICH FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 1, 1967.

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3. THE BOARD FURTHER FINDS THAT ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS STORES AT WINDSOR, SAVE AND EXCEPT STORE MANAGERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED



DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. WHILE THE RESPONDENT IN THIS CASE REQUESTED THE EXCLUSION OF THE CLASSIFICATION OF MEAT DEPARTMENT MANAGER, SINCE NO PERSON IS EMPLOYED IN THAT CLASSIFICATION AT THE PRESENT TIME, AND SINCE THE PROPOSED EXCLUSION WAS CONTESTED BY THE APPLICANT, THE BOARD IS UNABLE TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF PERSONS OCCUPYING THAT CLASSIFICATION AND, ACCORDINGLY, IS NOT ABLE TO MAKE ANY DETERMINATION WITH RESPECT TO THE PROPOSED EXCLUSION. IF THE PARTIES ARE UNABLE TO REACH AGREEMENT WITH RESPECT TO THE EXCLUSION OF THE CLASSIFICATION "MEAT DEPARTMENT MANAGER" AT SUCH TIME AS A PERSON IS EMPLOYED IN THAT CLASSIFICATION, THE REMEDY PROVIDED BY SECTION 79(2) OF THE LABOUR RELATIONS ACT WILL BE AVAILABLE TO THE PARTIES.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 24TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77 (2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13412-67-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 786 (APPLICANT) V. FRASER-BRACE ENGINEERING COMPANY, LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND D. ALAN PAGE.

APPEARANCES AT HEARING: JAMES TYE FOR THE APPLICANT,  
A. J. CLARK AND D. H. STEVENS FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 9, 1967.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPOSED OF ALL EMPLOYEES WORKING IN ITS FIELD FABRICATION, ERECTION, WELDING, REPAIRING AND DIS-MANTLING OF STRUCTURAL STEEL, AND ALL SUCH OTHER WORK NORMALLY PERFORMED BY IRON WORKERS IN THE DISTRICT OF SUDBURY.

4. THE RESPONDENT SUBMITS THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE APPLICANT ALREADY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION. IN SUPPORT OF ITS SUBMISSION, THE RESPONDENT FILED AN AGREEMENT DATED JANUARY 15TH, 1963, ENTERED INTO BY THE APPLICANT AND THE RESPONDENT,

WHICH INCORPORATES THE COLLECTIVE AGREEMENT THEN IN EFFECT BETWEEN THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO (HEREINAFTER REFERRED TO AS THE ASSOCIATION) AND THE IRON WORKERS' DISTRICT COUNCIL OF EASTERN CANADA (HEREINAFTER REFERRED TO AS THE COUNCIL) OF WHICH THE APPLICANT IS A MEMBER. THE APPLICANT ON THE OTHER HAND SUBMITS THAT THE WORK BEING DONE BY THE EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION, ON THE PROJECT WITH WHICH WE ARE HERE CONCERNED, DOES NOT FALL WITHIN THE SCOPE OF THE ABOVE MENTIONED COLLECTIVE AGREEMENT.

5. THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE COUNCIL PROVIDES THAT THE AGREEMENT COVERS ALL EMPLOYEES ENGAGED OUTSIDE OF THE SHOP IN ALL RIGGING ON MACHINERY, MACHINERY MOVING, PLANT MAINTENANCE RIGGING AND WELDING COMING UNDER THE JURISDICTION OF THE TRADE WITHIN THE PROVINCE OF ONTARIO. ACCORDING TO THE EVIDENCE, A COMPANY OTHER THAN THE RESPONDENT HAS A CONTRACT FOR THE STRUCTURAL STEEL ERECTION BEING INSTALLED AT THE PROJECT, THE CONTRACT OF THE RESPONDENT BEING CONFINED TO ALL WORK BEING DONE IN CONNECTION WITH THE ERECTION AND INSTALLATION OF MACHINERY INCLUDING CONVEYORS. WE FIND THAT THE WORK BEING PERFORMED BY THE RESPONDENT IS ENCOMPASSED IN THE TERM "ALL RIGGING ON MACHINERY" WHICH FORMS A PART OF THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT.

6. THE BOARD THEREFORE FINDS THAT THE APPLICANT ACQUIRED THE BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED IN THE INSTANT APPLICATION BY VIRTUE OF THE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT DATED JANUARY 15TH, 1963, WHICH INCORPORATED THE COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE COUNCIL. THERE IS NO EVIDENCE TO SUGGEST THAT THE APPLICANT HAS ABANDONED ITS BARGAINING RIGHTS AND ACCORDINGLY THE BOARD FINDS THAT THE APPLICANT AS OF THE DATE OF THE INSTANT APPLICATION CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THE APPLICATION ACCORDINGLY IS UNTIMELY.

7. WE MENTIONED THAT REPRESENTATIONS WERE MADE AT THE HEARING AS TO WHETHER THE COLLECTIVE AGREEMENT ENTERED INTO BY THE PARTIES IN 1963 HAS CONTINUED TO REMAIN IN FORCE AND EFFECT UNTIL THE PRESENT TIME. HAVING FOUND THAT THE APPLICATION IS UNTIMELY, SINCE THE APPLICANT ALREADY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION ON THIS MATTER.

8. THE APPLICATION IS DISMISSED.

13423-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)  
V. E. G. M. CAPE & CO. (1956) LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: H. A. HERRON AND A. LAROCQUE FOR THE APPLICANT,  
H. L. WALLIS AND G. G. PARKINSON FOR THE RESPONDENT.

DECISION OF THE BOARD:

AUGUST 21, 1967.

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3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT ALLEGED THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE RESPONDENT IS ALREADY PARTY TO A COLLECTIVE AGREEMENT WHICH IS BINDING UPON THE APPLICANT. IN SUPPORT OF ITS ALLEGATION THE RESPONDENT FILED WITH THE BOARD AN UNDATED COPY OF A PURPORTED LIST OF TRADE UNIONS WHO ARE MEMBERS OF THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF OSHAWA-WHITBY-PORT HOPE-COBOURG AND VICINITY. THE NAME OF THE APPLICANT TRADE UNION APPEARS ON THIS LIST. THE RESPONDENT ALSO FILED WITH THE BOARD A COPY OF A DOCUMENT ENTITLED "WORKING AGREEMENT" DATED FEBRUARY 10TH, 1967 WHICH WAS ENTERED INTO BY THE RESPONDENT AND THE JOINT BUILDING AND CONSTRUCTION TRADES COUNCIL OF OSHAWA, PORT HOPE, COBOURG AND VICINITY. THE TERMINATION CLAUSE OF THE AGREEMENT PROVIDES THAT IT IS TO REMAIN IN FORCE FOR A PERIOD OF A YEAR FROM FEBRUARY 10TH, 1967, THE DATE OF THE MAKING OF THE AGREEMENT. THE RESPONDENT ALLEGES THAT THE APPLICANT WAS A MEMBER OF THE COUNCIL AT THE TIME THE AGREEMENT WAS ENTERED INTO BY THE PARTIES AND THEREFORE IS BOUND BY IT.

5. ARTICLE 5 OF THE ABOVE AGREEMENT READS IN PART AS FOLLOWS:

"THE COMPANY AGREES TO RECOGNIZE AND BE BOUND BY THE AGREEMENTS EXISTING BETWEEN EACH OF THE UNIONS AFFILIATED WITH THE COUNCIL AND THEIR RESPECTIVE EMPLOYER GROUPS AND SPECIFICALLY AGREES THAT THE PROVISIONS RELATING TO WAGES, HOURS AND WORKING CONDITIONS SET FORTH IN THE SAID AGREEMENTS SHALL BE BINDING ON THE COMPANY."

THE APPLICANT ADMITS THAT AT THE TIME THE ABOVE AGREEMENT WAS SIGNED IT WAS A MEMBER OF THE COUNCIL BUT THAT IT CEASED TO BE A MEMBER SOME TIME DURING THE PERIOD BETWEEN FEBRUARY 10TH AND JULY 26TH, 1967, THE DATE OF THE MAKING OF THE INSTANT APPLICATION. THE APPLICANT FURTHER STATES THAT BOTH DURING THE PERIOD THAT IT WAS A MEMBER OF THE COUNCIL AND SINCE THAT TIME TO THE DATE OF APPLICATION, NO COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE COUNCIL AND ANY EMPLOYER GROUP, AS PROVIDED FOR IN ARTICLE 5. THE APPLICANT ACCORDINGLY ARGUED THAT THERE IS NO COLLECTIVE AGREEMENT WHICH IS A BAR TO ITS APPLICATION.

6. THE RESPONDENT DID NOT PRODUCE ANY COLLECTIVE AGREEMENT AT THE HEARING NOR IS THERE ANY EVIDENCE BEFORE THE BOARD THAT A COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO BY THE COUNCIL AND THE APPLICANT (EVEN IF WE WERE TO ASSUME THAT THE APPLICANT WOULD STILL BE BOUND BY SUCH AN AGREEMENT IF IT EXISTED). THE BOARD FINDS, THEREFORE, THAT THERE IS NO COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND THE RESPONDENT, OR ANY EXISTING BARGAINING RIGHTS HELD BY THE APPLICANT FOR THE EMPLOYEES OF THE

RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION, WHICH MAKES THIS AN UNTIMELY APPLICATION.

7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 2ND, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

#### INDEXED ENDORSEMENTS - TERMINATION

13377-67-R: MRS. MADELINE WHEELER (APPLICANT) v. FUR & LEATHER WORKER'S UNION, LOCAL 82, AMC & BW OF NA, AFL-CIO (RESPONDENT) v. COOPER-WEEKS LIMITED (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: MADELINE WHEELER FOR THE APPLICANT,  
VINCENT GENTILE, ALBERT HERSHKOVITZ AND J. H. OSLER, Q.C.  
FOR THE RESPONDENT, AND A. J. CLARK AND W. E. WAIT FOR THE  
INTERVENER.

DECISION OF THE BOARD: August 21, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT IS BARGAINING AGENT FOR ALL EMPLOYEES OF COOPER-WEEKS LIMITED AT ITS 47 ORFUS ROAD PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.



3. THERE WERE SUBMITTED IN SUPPORT OF THIS APPLICATION TWO DOCUMENTS WHICH TOGETHER BEAR THE SIGNATURES OF MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE RESPONDENT IS BARGAINING AGENT. AT THE HEARING IN THIS MATTER, THE BOARD CONDUCTED ITS USUAL ENQUIRY INTO THE ORIGATION AND CIRCULATION OF THESE DOCUMENTS. THE RESPONDENT THEN ADDUCED EVIDENCE IN SUPPORT OF ALLEGATIONS WHICH IT MADE, TENDING TO SHOW THAT THESE DOCUMENTS DID NOT REVEAL A VOLUNTARY EXPRESSION OF WISHES OF THE EMPLOYEES.

4. THE EVIDENCE IS, IN PART, THAT MR. JACK COOPER, PRESIDENT OF THE EMPLOYER, MADE A SPEECH TO THE EMPLOYEES IN THE BARGAINING UNIT A FEW DAYS BEFORE THE "PETITIONS" ABOVE REFERRED TO WERE CIRCULATED. MR. COOPER MADE REFERENCE TO RUMOURS ABOUT SUCH A PETITION, STATED THAT HE HAD NOTHING TO DO WITH ANY SUCH PETITION, AND STATED FURTHER THAT EMPLOYEES HAD THE RIGHT TO SIGN SUCH PETITIONS, UNDER THE LAW. IT IS NOT FOR THIS BOARD TO COMMENT ON THIS SPEECH, SAVE ONLY TO SAY THAT, IN ITSELF, IT APPEARS NOT TO BE IMPROPER, AND TO CONTAIN NEITHER THREATS NOR PROMISES TO EMPLOYEES WITH RESPECT TO UNION OR ANTI-UNION ACTIVITY.

5. IT MAY BE THAT, AT THE TIME THEY AFFIXED THEIR SIGNATURES TO THE PETITION, THE EMPLOYEES WERE AWARE OF, AND TOOK INTO ACCOUNT, THE APPARENT FACTS OF THEIR EMPLOYER'S DISLIKE FOR THE OFFICIALS OF THE RESPONDENT TRADE UNION. IT DOES NOT FOLLOW FROM THIS, HOWEVER, THAT THE PETITION ITSELF MIGHT NOT CONSTITUTE A VOLUNTARY EXPRESSION OF THE EMPLOYEE'S WISHES.

6. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF COOPER-WEEKS LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON AUGUST 8TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

7. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF COOPER-WEEKS LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF COOPER-WEEKS LIMITED AT ITS 47 ORFUS ROAD PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

13430-67-R: ARMY, NAVY AND AIRFORCE VETERANS IN CANADA - FORT WILLIAM  
UNIT NO. 257 (APPLICANT) V. BEVERAGE DISPENSER'S UNION LOCAL 757, OF  
THE HOTEL AND RESTAURANT EMPLOYEES UNION, A.F.L. C.I.O. C.L.C. (FORT  
WILLIAM) (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. F. O'KEEFE.

APPEARANCES AT HEARING: PETER S. GOOD FOR THE APPLICANT, AND  
NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 14, 1967.

1. THIS IS AN APPLICATION FOR DECLARATION TERMINATING THE BARGAIN-  
ING RIGHTS OF THE RESPONDENT.

2. SECTION 45(2) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

WHERE A TRADE UNION THAT HAS GIVEN NOTICE  
UNDER SECTION 11 OR SECTION 40 OR THAT HAS RECEIVED  
NOTICE UNDER SECTION 40 FAILS TO COMMENCE TO BARGAIN  
WITHIN SIXTY DAYS FROM THE GIVING OF THE NOTICE OR,  
AFTER HAVING COMMENCED TO BARGAIN BUT BEFORE  
THE MINISTER HAS APPOINTED A CONCILIATION OFFICER  
OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO  
ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN,  
THE BOARD MAY, UPON THE APPLICATION OF THE  
EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE  
BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTA-  
TION VOTE, DECLARE THAT THE TRADE UNION NO  
LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING  
UNIT.

3. IN THE INSTANT CASE THERE WAS A COLLECTIVE AGREEMENT BETWEEN  
THE APPLICANT AND THE RESPONDENT, WHICH EXPIRED ON FEBRUARY 2ND, 1967.  
NOTICE TO BARGAIN WAS GIVEN PURSUANT TO SECTION 40 AND NEGOTIATIONS DID  
TAKE PLACE BETWEEN THE PARTIES IN MARCH OF 1967. THE LAST CONTACT WHICH  
THE APPLICANT HAD WITH THE RESPONDENT WAS IN THE FORM OF A LETTER FROM  
THE RESPONDENT TO THE APPLICANT, DATED MAY 22ND, 1967. A LETTER FROM THE  
APPLICANT TO THE RESPONDENT, DATED JUNE 24TH, 1967, HAS GONE UNANSWERED.  
IT IS NOTEWORTHY THAT THE RESPONDENT, ALTHOUGH IT FILED A REPLY IN THIS  
MATTER, DID NOT ATTEND AT THE HEARING TO GIVE ANY EXPLANATION FOR ITS  
HAVING ALLOWED A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT  
SOUGHT TO BARGAIN.

4. THE RESPONDENT HAS OFFERED NEITHER AN EXPLANATION FOR ITS  
FAILURE TO BARGAIN NOR ANY EVIDENCE OF CONTINUING EMPLOYEE SUPPORT. IN  
THIS CONNECTION REFERENCE MAY BE MADE TO THE DOMINION STORES LIMITED CASE,  
1956 C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,047.

5. HAVING REGARD TO ALL THESE CIRCUMSTANCES, THE BOARD DECLARES  
THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES OF THE  
APPLICANT IN THE BARGAINING UNIT.

INDEXED ENDORSEMENT - PROSECUTION

13411-67-U: WESTEEL-ROSCO LIMITED (FORMERLY ROSCO METAL PRODUCTS LIMITED) (APPLICANT) v. UNITED STEELWORKERS OF AMERICA; LOCAL 6448, CLIFFORD LEBLANC THOMAS WAKEMAN AND RAYMOND BENNETT (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT HEARING: N. J. LONG, G. HATELY, J. DOUWES AND E. BULGIN FOR THE APPLICANT, L. INGLE FOR THE RESPONDENTS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER F. W. MURRAY:           August 9, 1967.

1.           THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR CALLING, AUTHORIZING, COUNSELLING, PROCURING, SUPPORTING AND ENCOURAGING AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTIONS 54(2), 55 AND 57 OF THE LABOUR RELATIONS ACT.

2.           AT THE HEARING IN THIS MATTER THE APPLICANT PARTICULARIZED ITS ALLEGATIONS MADE PURSUANT TO SECTION 55 ALLEGING THAT THE RESPONDENT TRADE UNION CALLED OR AUTHORIZED AN UNLAWFUL STRIKE AND THAT THE NAMED INDIVIDUAL RESPONDENTS COUNSELLED, PROCURED, SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE. THE APPLICANT AT THE HEARING FURTHER INFORMED THE BOARD THAT THE ALLEGED VIOLATION OF SECTION 57 ONLY PERTAINED TO THE NAMED INDIVIDUAL RESPONDENTS.

3.           ON THE BASIS OF THE EVIDENCE THE BOARD DISMISSES THE APPLICATION AS IT RELATES TO THE ALLEGED CONTRAVENTION OF SECTION 57 BY THE NAMED INDIVIDUAL RESPONDENTS.

4.           ON THE BASIS OF THE EVIDENCE THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(A) THAT THE SAID RESPONDENT UNITED STEELWORKERS OF AMERICA, LOCAL 6448, AUTHORIZED AN UNLAWFUL STRIKE AT THE BROCKPORT ROAD PLANT OF THE APPLICANT, IN METROPOLITAN TORONTO, COMMENCING ON JULY 18TH, 1967, IN CONTRAVENTION OF SECTION 55 OF THE ACT.

(B) THAT THE SAID RESPONDENTS CLIFFORD LEBLANC, THOMAS WAKEMAN AND RAYMOND BENNETT SUPPORTED AN UNLAWFUL STRIKE AT THE BROCKPORT ROAD PLANT OF THE APPLICANT, IN METROPOLITAN TORONTO, COMMENCING JULY 18TH, 1967, IN CONTRAVENTION OF SECTION 55 OF THE ACT.

5.           THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER O. HODGES:

AUGUST 9, 1967.

I DISSENT.

I FIND NO EVIDENCE WHICH LENDS ANY SUPPORT TO THE ALLEGATIONS OF THE APPLICANT THAT THE RESPONDENTS CONTRAVENED ANY OF THE PROVISIONS OF SECTIONS 55 OR 57 OF THE ACT. ACCORDINGLY, I WOULD DISMISS THE ENTIRE APPLICATION.

INDEXED ENDORSEMENTS - SECTION 65

12810-66-U: INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS'  
UNION, LOCAL #8 (COMPLAINANT) V. DOMINION LUGGAGE CO. LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND O. HODGES.

APPEARANCES AT HEARING: JEFFREY SACK, MARTIN LEVINSON AND A. LEVINE  
FOR THE COMPLAINANT, AND R. D. PERKINS, HARRY WARZECHA AND LUIGI  
MONGILO FOR THE RESPONDENT.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND  
BOARD MEMBER F. W. MURRAY: AUGUST 30, 1967.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 65 OF  
THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED  
PERSONS WERE LAID OFF AND NOT RECALLED BY THE RESPONDENT BECAUSE OF  
THEIR UNION ACTIVITY.

2. AT THE TIME THE AGGRIEVED PERSONS WERE LAID OFF, NAMELY ON  
DECEMBER 14TH, 1966, THE COMPLAINANT TRADE UNION WAS ENGAGED IN AN  
ORGANIZATIONAL CAMPAIGN AMONG EMPLOYEES OF THE RESPONDENT. WHILE THE  
OFFICIALS OF THE RESPONDENT WERE AWARE THAT SUCH A CAMPAIGN WAS IN  
PROGRESS, THERE IS NO EVIDENCE THAT THE RESPONDENT WAS AWARE THAT THE  
AGGRIEVED PERSONS OR ANY OF THEM WERE MEMBERS OF THE UNION OR ACTIVE ON  
ITS BEHALF. ON THE OTHER HAND, THE EVIDENCE DOES ESTABLISH SOUND  
BUSINESS REASONS FOR THE LAY-OFF OF EMPLOYEES WHICH TOOK PLACE AT THAT  
TIME. WHILE SENIORITY WAS CONSIDERED BY THE RESPONDENT IN SOME CASES, IT  
WAS NOT STRICTLY ADHERED TO NOR, INDEED, WAS THE RESPONDENT UNDER ANY  
OBLIGATION TO ADHERE TO THE PRINCIPLE OF SENIORITY. IN MAKING THE LAY-OFF  
THE COMPANY HAD REGARD TO THE SKILLS AND GENERAL QUALIFICATIONS OF THE  
EMPLOYEES LAID OFF. THE QUESTION OF WHETHER THE COMPANY'S ASSESSMENT OF  
THE MERITS OF THESE EMPLOYEES WAS ACCURATE IS NOT BEFORE US. THE ONLY  
QUESTION FOR THIS BOARD IS WHETHER THE EMPLOYEES CONCERNED WERE DISCRIMI-  
NATED AGAINST ON ACCOUNT OF THEIR UNION ACTIVITY. IN THIS RESPECT, IT IS  
NOTEWORTHY THAT THE GROUP OF EMPLOYEES LAID OFF INCLUDED SOME WHO WERE,  
AND SOME WHO WERE NOT MEMBERS OF THE UNION. AGAIN, OF THOSE WHO HAVE  
SINCE BEEN RECALLED, SOME WERE, AND SOME WERE NOT MEMBERS OF THE UNION,  
AND THE SAME APPLIES WITH RESPECT TO THOSE WHO WERE NEVER LAID OFF.



ALTHOUGH THE EMPLOYEES WERE ADVISED THAT THEY WOULD BE RECALLED AFTER A FEW WEEKS, IT IS CLEAR THAT IN MANY CASES THERE WAS NO INTENTION OF RE-CALLING THEM BECAUSE THEY WERE NOT REGARDED AS SATISFACTORY. WHATEVER MAY BE SAID OF THIS PRACTICE, IT DOES NOT RELATE TO UNION ACTIVITY.

3. WHILE THERE IS SOME CIRCUMSTANTIAL EVIDENCE WHICH WOULD SUPPORT THE COMPLAINANT'S CASE, IT IS OUR CONCLUSION, HAVING REGARD TO THE WHOLE OF THE EVIDENCE, THAT IT DOES NOT PROVIDE SUFFICIENT BASIS FOR THE CONCLUSION, ON THE BALANCE OF PROBABILITIES, THAT THE AGGRIEVED PERSONS WERE DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT.

4. WHILE IT IS UNNECESSARY FOR US TO DEAL IN ANY DETAIL WITH THE LENGTHY EVIDENCE WHICH WAS HEARD IN THIS MATTER, WE WOULD REFER TO ONE POINT OF DIRECT EVIDENCE AS TO WHICH THERE WAS A SIGNIFICANT CONFLICT IN THE TESTIMONY OF THE WITNESSES. EACH OF THE AGGRIEVED PERSONS TESTIFIED THAT SHE MADE ONE AND ONLY ONE TELEPHONE CALL TO THE COMPANY RELATING TO HER POSSIBLE RECALL. IN EACH CASE THIS TELEPHONE CALL WAS SAID TO HAVE BEEN MADE IN EARLY FEBRUARY, 1967, AND IN EACH CASE THE DATE AND THE TIME OF THE CALL WAS RECORDED ON THE ADVICE OF THE UNION. IN EACH CASE THE AGGRIEVED PERSON TESTIFIED THAT SHE SPOKE TO LUIGI MONGILO, THE SUPERVISOR, AND IN EACH CASE THE TESTIMONY WAS THAT MR. MONGILO TOLD THE WITNESS SHE WOULD NOT BE RECALLED BECAUSE SHE HAD SIGNED FOR THE UNION, OR WORDS TO LIKE EFFECT. THIS EVIDENCE WAS DENIED BY MR. MONGILO, WHO TESTIFIED THAT MOST OF THE AGGRIEVED PERSONS TELEPHONED ON MORE THAN ONE OCCASION OR THAT INQUIRIES HAD BEEN MADE ON THEIR BEHALF. MR. MONGILO WAS AN EXPERIENCED SUPERVISOR AND WELL KNEW THE SIGNIFICANCE WHICH SUCH AN ADMISSION WOULD HAVE. HAVING REGARD TO THE UNLIKELIHOOD OF THE MATTER TESTIFIED TO, AND CONSIDERING THE Demeanour OF THE WITNESSES IN THE WITNESS BOX, AND ALL OF THE EVIDENCE, INCLUDING THE EVIDENCE OF OTHER WITNESSES TENDING TO CORROBORATE THAT OF MR. MONGILO, WE PREFER THE EVIDENCE OF MR. MONGILO TO THAT OF THE AGGRIEVED PERSONS IN THIS RESPECT. IT MAY BE NOTED THAT FOLLOWING THE TESTIMONY OF MR. MONGILO, THE AGGRIEVED PERSONS WERE NOT RE-EXAMINED ON THESE POINTS.

5. FOR ALL OF THE FOREGOING REASONS AND HAVING REGARD TO ALL OF THE EVIDENCE AND ARGUMENTS PRESENTED TO THE BOARD, WE ARE NOT SATISFIED THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: August 30, 1967.

I DISSENT.

I WOULD HAVE DIRECTED THE RE-EMPLOYMENT OF THE AGGRIEVED PERSONS WHEN WORK SIMILAR TO THAT IN WHICH THEY WERE EXPERIENCED WAS AVAILABLE, AND BEFORE NEW EMPLOYEES WERE HIRED TO DO SUCH WORK.

THERE IS NO EVIDENCE THAT MANAGEMENT KNEW THAT THE AGGRIEVED PERSONS WERE UNION MEMBERS, LEADERS OR VOCAL ADVOCATES OF UNION MEMBERSHIP IN THE FACTORY. BUT THERE IS EVIDENCE OF PAST CONFLICT BETWEEN THE COMPANY AND THE UNION, AND THERE IS EVIDENCE THAT THE AGGRIEVED PERSONS ARE SKILLED AND EXPERIENCED WORKERS AND WERE "LAID OFF" FOR REASONS THAT ARE FLIMSY AND UNCONVINCING, IN MY OPINION.

THERE IS DIRECT EVIDENCE THAT THE EMPLOYER WAS AWARE OF THE ORGANIZATIONAL CAMPAIGN BEGUN IN OCTOBER 1966, THROUGH LEAFLETS DISTRIBUTED AT THE PLANT. THE FIRST OF THESE LEAFLETS WAS DISTRIBUTED EARLY IN NOVEMBER 1966 AND A SECOND ONE WAS DISTRIBUTED TWO OR THREE WEEKS LATER. IN BOTH CASES EIGHT OR TEN PERSONS ASSISTED IN THE DISTRIBUTION AT THE PLANT GATES, AND COMPANY SUPERINTENDENT LUIGI MONGILO ACCEPTED COPIES OF BOTH LEAFLETS WHEN HE LEFT THE PLANT AFTER WORK. SUBSEQUENTLY A THIRD LEAFLET WAS DISTRIBUTED IN FEBRUARY AND A FOURTH LEAFLET IN MARCH.

THERE IS DIRECT EVIDENCE OF AN EARLIER COLLECTIVE BARGAINING RELATIONSHIP WITH THE SAME UNION, WHICH ENDED WHEN THE EMPLOYEES VOTED TO STRIKE ON AUGUST 23RD, 1963. THIS STRIKE TERMINATED AT THE END OF DECEMBER 1963, WITHOUT A RENEWAL OF THE COLLECTIVE AGREEMENT.

WHILE THE CHANGE IN PRODUCTION ASSEMBLY METHODS AND THE USE OF A DIFFERENT METAL FOR THE FRAME OF THE PRODUCT APPEARS TO BE RESPONSIBLE FOR THE MANUFACTURE OF FEWER UNITS AT THIS TIME AND THEREFORE A COMPANY REQUIREMENT FOR FEWER EMPLOYEES, THE LAY-OFF WAS COINCIDENTAL WITH THE ORGANIZING CAMPAIGN OF THE UNION.

WHILE THE COMPANY WAS NOT BOUND BY SENIORITY TO RETAIN LONG-SERVICE EMPLOYEES, COMMON SENSE WOULD INDICATE THE SOUND BUSINESS PRACTICE OF CONTINUING THE EMPLOYMENT OF EXPERIENCED WORKERS.

COMPANY WITNESS LUIGI MONGILO TESTIFIED THAT THE LAY-OFF LIST WAS CAREFULLY COMPILED TO INCLUDE EMPLOYEES WHO WERE LESS DESIRABLE FOR REASONS SUCH AS PREGNANCY OR SLOWNESS. ALL EMPLOYEES WERE PROMISED RE-EMPLOYMENT IN FROM FOUR WEEKS TO TWOMONTHS BY ONE OF THE OWNERS OF THE COMPANY AT A MEETING WHICH HE CALLED IN THE FACTORY, WHEN HE DECLARED A "SEASONAL" LAY-OFF. THIS SPEECH WAS TRANSLATED INTO ITALIAN FOR THE AGGRIEVED PERSONS AND OTHERS BY LUIGI MONGILO IMMEDIATELY AFTER THE OWNER HAD MADE HIS EXPLANATION FOR THE LAY-OFF AND HIS PROMISE OF RE-EMPLOYMENT. ALL THE AGGRIEVED PERSONS SPEAK ITALIAN AS A FIRST LANGUAGE.

ALL THE AGGRIEVED PERSONS GAVE EVIDENCE AS TO THEIR EXPERIENCE AND COMPETENCE IN THE WORK WHICH THE COMPANY REQUIRES, SOME BEING EXPERIENCED IN SEVERAL OPERATIONS. ALL OF THE AGGRIEVED PERSONS TESTIFIED THAT THEY HAD NEVER BEEN CRITICIZED FOR THEIR WORK.

ACCORDING TO THE AGGRIEVED PERSONS' TESTIMONY WHEN THEY LEARNED THAT THE COMPANY WAS HIRING NEW EMPLOYEES THEY TELEPHONED LUIGI MONGILO AND INQUIRED ABOUT THEIR JOBS. MR. MONGILO TOLD THEM THEY WOULD NOT BE REHIRED BECAUSE THEY HAD BECOME UNION MEMBERS. WHILE MR. MONGILO DENIES THIS CHARGE, I DO NOT CONSIDER IT BEYOND PROBABILITY THAT HE ACTUALLY

MADE SUCH A STATEMENT AS A PLOY TO FRIGHTEN OTHER EMPLOYEES AWAY FROM THE UNION. SUCH A MANOEUVRE WOULD HAVE THE EFFECT OF LETTING THE COMPANY OFF THE HOOK FOR THEIR PROMISE OF RE-EMPLOYMENT WHILE MAKING THE UNION A SCAPEGOAT RESPONSIBLE FOR LOSS OF JOBS.

ON ADVICE OF COUNSEL, TWO OF THE AGGRIEVED PERSONS, MRS. FILAMINA MARROCCO AND MRS. ANNUNZIATA PATRIZI, WERE RECALLED ON APRIL 23RD ACCORDING TO THE EVIDENCE OF MR. MONGILO. EVIDENCE BY THESE AGGRIEVED PERSONS HAD ALREADY BEEN HEARD BY THE BOARD. SUCH ADVICE BY COUNSEL WOULD NOT BE GIVEN WITH RESPECT TO THE USEFULNESS OF THESE EMPLOYEES AS WORKERS, BUT RATHER BECAUSE THE CONTINUED LAY-OFF OF THESE AGGRIEVED PERSONS WOULD BE A LIABILITY TO THE COMPANY DEFENCE AGAINST THE UNION CHARGE.

HOWEVER, IF MARROCCO AND PATRIZI WERE GOOD ENOUGH TO BE REHIRED, WHY NOT MARIA RASSO, WHO ALONG WITH THESE TWO WAS NOT INVOLVED IN THE FILLER OPERATION, WHICH WAS SAID TO HAVE BEEN ELIMINATED. MARIA RASSO HAD SIX YEARS' SERVICE IN HER DEPARTMENT, MORE THAN ANYONE, HAD NEVER BEFORE BEEN LAID OFF AND COULD DO A NUMBER OF JOBS. THE REASON FOR NOT RE-EMPLOYING MARIA RASSO, IN MY VIEW, IS THAT SHE WAS AN ACTIVE UNION SUPPORTER IN THE 1963 STRIKE, ACCORDING TO HER EVIDENCE. WHILE SHE WAS RE-EMPLOYED AFTER THE 1963 STRIKE, I BELIEVE THE COMPANY DECIDED THAT THE DECEMBER 14TH LAY-OFF WOULD BE A GOOD TIME TO ELIMINATE A KNOWN UNIONIST, AND DECIDED TO DO SO UNDER COVER OF THE LAY-OFF.

AS TO THE TWO EMPLOYEES MARIA MILANO AND MARIA MONTECARVO, WHO WERE IN THE FILLER OPERATION THAT WAS ELIMINATED, I FAIL TO UNDERSTAND THE REFUSAL OF THE COMPANY TO REHIRE THESE EMPLOYEES FOR ANY REASON OTHER THAN THEIR NOW OBVIOUS ATTACHMENT TO THE UNION. MR. MONGILO SAID THE COMPANY HAD INTENDED TO REHIRE THEM, BUT DECIDED AGAINST IT.

WHILE WE ARE NOT TOLD BY MR. MONGILO EXACTLY WHEN THE COMPANY DECIDED NOT TO RE-EMPLOY THESE THREE, HE REFERRED TO THE DECISION NOT TO REHIRE RASSO, MILANO AND MONTECARVO AT THE SAME TIME HE EXPLAINED THE DECISION ARRIVED AT ON ADVICE OF COUNSEL CONCERNING THE CALL-BACK OF PATRIZI AND MARROCCO ON APRIL 23RD. THE DECISION WOULD IN ALL LIKELIHOOD HAVE BEEN MADE AFTER THE HEARINGS BEGAN AND EVIDENCE WAS GIVEN AND THEN THERE WAS NO DOUBT ABOUT THE UNION ACTIVITY OF THE AGGRIEVED PERSONS, BECAUSE THEY ALL TESTIFIED THAT THEY WERE MEMBERS.

FINALLY, ALL THE AGGRIEVED PERSONS TESTIFIED THAT THEY WERE BUSY AND HAD WORKED OVERTIME IN THE WEEK THEY WERE LAID OFF.

EVIDENCE OF THE AGGRIEVED PERSONS WAS TAKEN IN TRANSLATION THROUGH A COMPETENT INTERPRETER. BECAUSE OF THIS THERE IS MORE CHANCE OF APPARENT INCONSISTENCY THAN WITH THE EVIDENCE OF MONGILO. I GIVE THE WEIGHT IN THE MATTER OF CREDIBILITY TO THE FIVE AGGRIEVED PERSONS WHO DELIVERED THEIR EVIDENCE WITH CONVICTION OVER THE EVIDENCE OF MONGILO WHO WAS CONTRADICTED BY OTHER COMPANY WITNESSES ON CERTAIN POINTS OF EVIDENCE, AND WHO HIMSELF CONFESSED TO TELLING LIES TO THE EMPLOYEES CONCERNING PROMISES OF THEIR RE-EMPLOYMENT.

I WOULD THEREFORE ORDER REINSTATEMENT OF ALL THE AGGRIEVED PERSONS WITH COMPENSATION FOR TIME LOST DUE TO THE EMPLOYMENT OF OTHER PERSONS ON WORK THAT BELONGED TO THE AGGRIEVED PERSONS AND WHICH WAS DONE BY OTHER EMPLOYEES IN THEIR ABSENCE.

13501-67-U: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. DELL CONSTRUCTION (RESPONDENT).

- AND -

13542-67-U: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. DELL CONSTRUCTION (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND H. F. IRWIN.

DECISION OF THE BOARD:        AUGUST 23, 1967.

1.        IN A COMPLAINT DATED AUGUST 10, 1967, MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, THE COMPLAINANT REQUESTS,

"THE RESPONDENT RECOGNIZE THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA THROUGH AUTOMATIC CERTIFICATION OF THE UNION BY THE LABOUR RELATIONS BOARD TO PROTECT THOSE EMPLOYEES FROM FURTHER UNWARRENTED ACTION CONDEMNED BY THE LABOUR RELATIONS ACT."

IN A FURTHER COMPLAINT DATED AUGUST 18, 1967, THE COMPLAINANT REQUESTS,

"THE COMPANY PETITION OR "EMPLOYEES STATEMENT OF DESIRE" NOT BE ACCEPTABLE BY THE ONTARIO LABOUR RELATIONS BOARD".

2.        "AUTOMATIC CERTIFICATION" AND THE "ACCEPTABILITY OF PETITIONS BY THE BOARD" ARE MATTERS DEALT WITH IN CERTIFICATION PROCEEDINGS AND THE BOARD DOES NOT HAVE JURISDICTION IN A COMPLAINT UNDER SECTION 65 TO DEAL WITH SUCH QUESTIONS.

3.        ON THE BASIS OF THE RELIEF SOUGHT AND WITHOUT IN ANY WAY DECIDING WHAT THE BOARD WOULD DO IF OTHER FORMS OF RELIEF HAD BEEN REQUESTED, OR FOR THAT MATTER IF A DIFFERENT TYPE OF PROCEEDING HAD BEEN LAUNCHED, THE BOARD PURSUANT TO SECTION 46 (1) OF THE RULES OF PROCEDURE FINDS THAT THE COMPLAINANT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED IN EITHER COMPLAINT AND THE COMPLAINTS ARE ACCORDINGLY DISMISSED.



INDEXED ENDORSEMENT - SECTION 79(2)

11802-66-M: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA,  
LOCAL 743 (APPLICANT) V. DUNLOP CANADA LIMITED (WHITBY) (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: AUGUST 21, 1967.

1. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED JULY 13TH, 1967, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO.

2. PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT KATHLEEN STEENBURG, PATRICIA LUCY RIEL, JUDITH ANN KNOCKER AND JULIA GURNEY ARE NOT EMPLOYEES OF THE RESPONDENT WITHIN THE MEANING OF SECTION 1 (3) OF THE ACT.

3. IN PARAGRAPH 14 OF THE ENDORSEMENT OF THE RECORD IN THIS MATTER DATED APRIL 10TH, 1967, THE EXAMINER WAS DIRECTED TO INQUIRE INTO THE NATURE AND EXTENT OF ANY CHANGES IN THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS SINCE THE MAKING OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. IT IS OUR VIEW, HAVING CONSIDERED THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES, THAT THERE HAVE, IN MOST INSTANCES, BEEN NO SIGNIFICANT CHANGES IN THE DUTIES AND RESPONSIBILITIES OF THE PERSONS EXAMINED. IN THOSE CASES WHERE CHANGES HAVE OCCURRED, HOWEVER, IT IS OUR VIEW THAT SUCH CHANGES SERVE ONLY TO ENHANCE THE MANAGERIAL OR CONFIDENTIAL NATURE OF THEIR WORK. NO USEFUL PURPOSE WOULD BE SERVED BY THE APPOINTMENT OF AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THESE PERSONS, AND WITH RESPECT TO THEM, THEREFORE, THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

13057A-67-JD: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE  
PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,  
LOCAL # 46 (COMPLAINANT) V. CLEMENT & BELLMORE CONSTRUCTION LIMITED AND  
INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF  
AMERICA, LOCAL # 183, AND LOCAL # 506 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: L. C. ARNOLD, W. HOWARD AND W. WEATHERUP FOR  
THE COMPLAINANT, A. J. CLARK, E. CLEMENTS AND J. HOLMES FOR THE  
RESPONDENT COMPANY, R. KOSKIE AND M. J. REILLY FOR THE RESPONDENT UNIONS.

DECISION OF THE BOARD: AUGUST 31, 1967.

1. THE COMPLAINANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION PURSUANT TO SECTION 66 OF THE LABOUR RELATIONS ACT WITH RESPECT TO A

DISPUTE THAT HAS ARISEN BETWEEN THE COMPLAINANT AND THE RESPONDENTS OVER AN ASSIGNMENT OF WORK MADE BY THE RESPONDENT COMPANY.

2. THE RELEVANT FACTS THAT LED TO THE INSTANT DISPUTE ARE OUTLINED BELOW. THE GENERAL CONTRACTOR ON A BUILDING PROJECT UNDER CONSTRUCTION FOR THE NORTHERN ELECTRIC COMPANY LIMITED, ON THE COMPANY'S PREMISES AT BRAMPTON, SUBCONTRACTED TO THE RESPONDENT COMPANY THE WORK OF INSTALLING THE NON-METALLIC PIPE FOR SANITARY AND STORM SEWERS FROM THE BUILDINGS UNDER CONSTRUCTION TO THE PROPERTY LINE OF THE PREMISES. THE RESPONDENT COMPANY IS A SEWER AND WATERMAIN CONTRACTOR AND IS A PARTY TO A CURRENT COLLECTIVE AGREEMENT WITH THE RESPONDENT LABOURERS LOCAL #506. DURING THE EIGHT YEAR PERIOD OF THE RESPONDENT'S COLLECTIVE BARGAINING RELATIONSHIP WITH LOCAL #506 AND IN THE YEARS PRIOR TO THAT TIME, THE RESPONDENT COMPANY HAS ALWAYS USED LABOURERS TO DO THE COMPLETE INSTALLATION OF NON-METALLIC PIPE FOR SANITARY AND STORM SEWERS, INCLUDING THE LAYING OF THE PIPE, WHETHER THE WORK WAS WITHIN THE PROPERTY LINE, OR STATED ANOTHER WAY, "ON SITE", OR WHETHER IT WAS ON PUBLIC OR PRIVATE STREETS OR THOROUGHFARES. FOLLOWING ITS USUAL PRACTICE THE RESPONDENT COMPANY COMMENCED TO INSTALL AND LAY THE PIPE ON APRIL 26TH, 1967, USING LABOURERS TO DO THE JOB.

3. ON APRIL 27TH, EDWARD CLEMENTS, THE PRESIDENT OF THE RESPONDENT COMPANY, WAS APPROACHED BY WILLIAM WEATHERUP, A BUSINESS AGENT FOR THE COMPLAINANT PLUMBERS LOCAL #46, WHO ASSERTED THAT THE ACTUAL LAYING OF THE PIPE FROM THE BUILDINGS TO THE PROPERTY LINE FELL WITHIN THE JURISDICTION OF LOCAL #46. IN SUPPORT OF HIS CONTENTION, WEATHERUP PRODUCED WHAT IS CALLED THE "GREEN BOOK" AND REFERRED TO WHAT IS KNOWN AS THE "HUTCHESON" DECISION. WEATHERUP ALSO PRODUCED AND REFERRED TO A BULLETIN ENTITLED "PIPELINE" DATED SEPTEMBER 17TH, 1965 ISSUED BY THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO. AS WELL, WEATHERUP PRODUCED AND REFERRED TO REGULATIONS PERTAINING TO PLUMBERS MADE PURSUANT TO THE APPRENTICESHIP AND TRADESMEN'S QUALIFICATION ACT, 1964. ALL OF THE ABOVE DOCUMENTS PRODUCED BY WEATHERUP WILL BE DEALT WITH BY THE BOARD LATER IN ITS DECISION.

4. ON THE BASIS OF HIS REPRESENTATIONS AND SUPPORTING DOCUMENTS, WEATHERUP CONVINCED CLEMENTS THAT THE PLUMBERS LOCAL #46, IN FACT, DID HAVE JURISDICTION FOR THE WORK CLAIMED AND HE AGREED TO EMPLOY MEMBERS OF LOCAL #46 FOR THAT PURPOSE. WEATHERUP UNDERTOOK TO SUPPLY THE PLUMBERS PROVIDED THAT CLEMENTS SIGNED AN AGREEMENT WITH LOCAL #46. ACCORDINGLY, ON THE SAME AFTERNOON CLEMENTS ON BEHALF OF THE RESPONDENT AND WEATHERUP ON BEHALF OF LOCAL #46 EXECUTED A "MEMORANDUM OF AGREEMENT FOR THE NORTHERN ELECTRIC JOB AT BRAMPTON" WHEREBY THE RESPONDENT COMPANY AGREED TO USE MEMBERS OF LOCAL #46 TO HANDLE AND INSTALL ALL STORM DRAINS AND SANITARY DRAINS WITHIN THE PROPERTY LIMITS OF THE CONSTRUCTION SITE AT BRAMPTON. THE EMPLOYER FURTHER AGREED TO COMPLY WITH THE EXISTING RATES OF WAGES, FRINGE BENEFITS AND CONDITIONS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN LOCAL #46 AND THE MECHANICAL CONTRACTORS' ASSOCIATION OF TORONTO. WE WOULD POINT OUT THAT SINCE THE RESPONDENT COMPANY DID NOT HAVE ANY MEMBERS OF LOCAL #46 IN ITS EMPLOY AT THE TIME THE AGREEMENT WAS SIGNED, THE DOCUMENT IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF

SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT.

5. ON THE AFTERNOON OF APRIL 27TH, AFTER SIGNING THE MEMORANDUM OF AGREEMENT, AT WEATHERUP'S INSISTENCE, CLEMENTS REMOVED THE TWO LABOURERS HE HAD BEEN EMPLOYING IN THE LAYING OF THE PIPE AND REPLACED THEM ON THE MORNING OF APRIL 28TH WITH TWO PLUMBERS SUPPLIED BY LOCAL #46. THE SAME TWO PLUMBERS WERE EMPLOYED BY THE RESPONDENT COMPANY ON MAY 2ND, 3RD AND 4TH. LABOURERS' LOCAL #506 PROTESTED TO THE COMPANY THE RE-ASSIGNMENT OF THE WORK IN QUESTION FROM LABOURERS TO PLUMBERS.

6. ON MAY 2ND, 1967, THE COMPLAINANT FILED THE INSTANT COMPLAINT, IN THE FIRST INSTANCE, REQUESTING THAT THE BOARD ISSUE AN INTERIM ORDER. AFTER CONSULTATION WITH THE PARTIES AT A HEARING ON MAY 5TH, THE BOARD DID MAKE AN INTERIM ORDER, BUT CONTRARY TO THE REPRESENTATIONS OF THE COMPLAINANT, AND ASSIGNED THE WORK IN DISPUTE TO THE LABOURERS IN ACCORDANCE WITH THE PROVISIONS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT EMPLOYER CLEMENT & BELLMORE CONSTRUCTION LIMITED AND LOCAL #506.

7. THE COMPLAINANT IS REQUESTING THAT THE BOARD, ON THE MERITS OF THE DISPUTE, ISSUE A DIRECTION REQUIRING THE RESPONDENT COMPANY TO ASSIGN THE WORK OF LAYING THE NON-METALLIC PIPE FOR THE SANITARY AND STORM SEWERS FROM THE BUILDINGS ON THE ABOVE PROJECT TO THE PROPERTY LINE OF THE PREMISES TO MEMBERS OF LOCAL #46. DURING THE COURSE OF THE LENGTHY HEARING BEFORE THE BOARD ON THE MERITS OF THE COMPLAINT, ALL PARTIES TO THE PROCEEDING ADDUCED VOLUMINOUS EVIDENCE AND ABLY MADE EXTENSIVE REPRESENTATIONS IN SUPPORT OF THEIR RESPECTIVE POSITIONS. ALL OF THE EVIDENCE AND REPRESENTATIONS HAVE BEEN CAREFULLY CONSIDERED BY THE BOARD IN ARRIVING AT ITS DETERMINATION IN THIS MATTER.

8. IN ORDER TO BETTER UNDERSTAND THE NATURE OF THE DISPUTE WE WOULD FIRST DESCRIBE THE MECHANICS OF THE WORK INVOLVED IN THE INSTALLATION OF NON-METALLIC PIPE. THE MECHANICS, WITH SOME VARIATIONS ACCORDING TO THE SIZE AND TYPE OF PIPE, ARE THE SAME AND ARE EQUALLY APPLICABLE FOR THE INSTALLATION ON NON-METALLIC PIPE FOR SANITARY AND STORM SEWERS AND ALSO WATERMAINS REGARDLESS OF WHETHER THE PIPE IS BEING INSTALLED "ON SITE" OR ON ROAD ALLOWANCES.

9. TRENCHES ARE EXCAVATED BY BACK HOES OR MECHANICAL SHOVELS WHICH ARE RUN BY OPERATING ENGINEERS TO THE APPROXIMATE DEPTH CALLED FOR BY THE SPECIFICATIONS. DEPENDING ON THE DEPTH OF THE TRENCH AND SOIL CONDITIONS, THE TRENCHES MAY REQUIRE SHORING WITH WOOD OR METAL. WITH HAND SHOVELS A BEDDING OF SAND OR STONE IS LAID TO THE EXACT LEVEL REQUIRED BY THE SPECIFICATIONS. THE PIPE IS LAID OUT ON THE GROUND ALONG THE SIDE OF THE TRENCH IN PREPARATION FOR THE ACTUAL LAYING. IF THE PIPE IS SUFFICIENTLY SMALL (I.E. UP SIX TO EIGHT INCHES IN DIAMETER) IT IS HANDED DOWN FROM A MAN ON THE SURFACE TO A MAN IN THE TRENCH. LARGER PIPE, HOWEVER, IS RAISED FROM THE EDGE OF THE TRENCH BY A SLING ATTACHED TO HEAVY MOVING EQUIPMENT, AGAIN RUN BY AN OPERATING ENGINEER, AND IS LOWERED INTO THE TRENCH. IN THE TRENCH, THE SPIGOT OF EACH SUCCEEDING PIECE OF PIPE IS

SHOVED INTO THE BELL OF THE PRECEDING PIECE OF PIPE. THIS IS EITHER DONE BY PUSHING IT WITH A PIECE OF WOOD OR BAR, OR WITH VERY HEAVY PIPE, A JACK IS USED. HOW THE JOINT IS MADE DEPENDS ON THE FORM OF PIPE. SOMETIMES A RUBBER GASKET IS ATTACHED TO THE SPIGOT OF ONE PIECE OF PIPE, AND USING A LUBRICANT ON THE OUTSIDE SURFACE, THE SPIGOT IS INSERTED INTO THE BELL OF THE ADJACENT PIECE OF PIPE TO MAKE THE SEAL. IN THE CASE OF LARGER PIPE, CEMENT IS APPLIED WITH A TROWEL TO SEAL THE PIECES OF PIPE. THE ELEVATION OF THE PIPE IS THEN CHECKED TO ENSURE THAT THE LEVEL OF THE PIPE IS CORRECT AND ANY REQUIRED ADJUSTMENTS IN THE GRADE OF THE BEDDING IN THE TRENCH ARE MADE. THE TRENCH IS IMMEDIATELY BACKFILLED WITH EARTH AT LEAST UP TO THE "SPRING" LINE OF THE PIPE TO HOLD IT FIRMLY IN PLACE. USUALLY AS SOON AS POSSIBLE THEREAFTER THE WHOLE TRENCH IS REFILLED BOTH BY HAND SHOVELS AND HEAVY EQUIPMENT AND IS TAMPED TO SURFACE LEVEL.

10. GOOD PRACTICE REQUIRES THAT THE PIPE BE LAID AS SOON AS POSSIBLE AFTER THE TRENCH IS DUG AND BEDDED, OTHERWISE THERE IS THE RISK THAT THE SHAPE AND GRADE TO THE TRENCH MAY BE ALTERED BY THE NATURAL EROSION OF THE SOIL BACK INTO THE TRENCH. ALSO THERE IS ALWAYS THE DANGER OF A CAVE-IN WHICH MAY COMPLETELY OBLITERATE THE TRENCH. GOOD PRACTICE ALSO REQUIRES THAT AS SOON AS THE PIPE IS LAID, THE TRENCH IS BACKFILLED AT LEAST TO THE "SPRING" LINE OF THE PIPE AND PREFERABLY TO THE SURFACE IN ORDER TO SECURE IT FIRMLY IN ITS SET PLACE. IT FOLLOWS, THEREFORE, THAT THE DIGGING OF THE TRENCH SHOULD PROCEED AT A PACE LITTLE AHEAD OF THE TIME WHEN THE PIPE CAN BE LAID. SIMILARLY, THE BACKFILLING OF THE PIPE SHOULD FOLLOW CLOSE BEHIND THE ACTUAL LAYING OF THE PIPE. IN OTHER WORDS, WHEN PROPERLY DONE, THE INSTALLATION OF THE PIPE IS ESSENTIALLY A SINGLE, INTEGRATED AND CONTINUOUS OPERATION.

11. WHEN LABOURERS ARE USED FOR THE WHOLE OPERATION OF INSTALLING THE PIPE, THAT IS, THE TRENCHING, PIPE-LAYING AND BACKFILLING, THERE ARE NO SCHEDULING PROBLEMS. WHEN MEMBERS OF THE CREW ARE NOT NEEDED FOR THE ACTUAL LAYING OF THE PIPE, THEY CAN ALWAYS BE UTILIZED IN THE PREPARATION OF THE TRENCH FOR THE LAYING OF MORE PIPE OR IN THE BACKFILLING OF THE PIPE ALREADY LAID. WHEN, HOWEVER, CREWS OF BOTH LABOURERS AND PLUMBERS ARE USED, THE LABOURERS DOING THE TRENCHING AND BACKFILLING AND THE PLUMBERS DOING THE PIPE-LAYING, SCHEDULING PROBLEMS DO ARISE. THE EVIDENCE REVEALS THAT WHEN COMPOSITE CREWS ARE USED, PLUMBERS MAY AND OFTEN DO REMAIN IDLE BETWEEN THE LAYING OF PIPES WHILE THE NEXT PORTION OF THE TRENCH IS BEING PREPARED OR THE NECESSARY BACKFILLING IS BEING DONE ON THE PREVIOUSLY LAID PIPE, ALL OF WHICH IS THE WORK OF LABOURERS. IT STANDS TO REASON THEREFORE THAT THE WHOLE INSTALLATION PROCESS IS BOUND TO BE MORE EFFICIENT WHEN PERFORMED BY A SINGLE CREW OF LABOURERS. MOREOVER, NOT EVEN TAKING INTO ACCOUNT THE FACT THAT THE WAGE RATE FOR PLUMBERS IS HIGHER THAN THAT PAID TO LABOURERS, BECAUSE OF THE MORE EFFICIENT USE OF MANPOWER, IT IS OBVIOUSLY MORE ECONOMICAL TO EMPLOY ONLY LABOURERS TO INSTALL THE PIPE WITH WHICH WE ARE HERE CONCERNED.

12. IN MAKING THE ABOVE FINDING, WE ARE NOT UNMINDFUL OF THE EVIDENCE OF THE MECHANICAL CONTRACTORS WHO WERE CALLED AS WITNESSES THAT THEY ENCOUNTERED NO DIFFICULTIES IN SCHEDULING CREWS OF BOTH



LABOURERS AND PLUMBERS IN THE INSTALLATION OF PIPE. IN THE CASE OF MECHANICAL CONTRACTORS, HOWEVER, ALMOST ALWAYS, THE PIPE-LAYING FORMS ONLY A SMALL PART OF THEIR CONTRACT, THE GREATER PART OF THEIR WORK BEING DONE INSIDE THE BUILDING OR BUILDINGS ON THE SITE. UNLIKE THE SEWER AND DRAINAGE CONTRACTORS, WHO HAVE NO WORK FOR PLUMBERS OTHER THAN THE LAYING OF THE PIPE, THE MECHANICAL CONTRACTORS CAN AND DO UTILIZE THE PLUMBERS ON "INSIDE" WORK WHILE FURTHER TRENCHING IS BEING PREPARED FOR THE LAYING OF ADDITIONAL PIPE. ACCORDINGLY, IT IS EASY TO APPRECIATE THE DIFFERENT AND FAVOURED POSITION OF MECHANICAL CONTRACTORS IN BOTH THE SCHEDULING AND THE EFFICIENT USE OF THEIR FORCES AS COMPARED WITH THE PROBLEMS THAT CONFRONT THE SEWER AND DRAINAGE CONTRACTORS.

13. THE LAYING OF NON-METALLIC SANITARY AND STORM SEWER PIPE REQUIRES NO PARTICULAR TRAINING AND THE SKILLS INVOLVED CAN READILY BE LEARNED ON THE JOB. IN OTHER WORDS, LABOURERS ARE AT LEAST AS CAPABLE OF PERFORMING THE WORK AS PLUMBERS. WE WOULD POINT OUT THAT BY A HUGE MARGIN MORE PIPE IS LAID BY SEWER, WATERMAIN AND DRAINAGE CONTRACTORS THAN IS LAID BY MECHANICAL CONTRACTORS. IT STANDS TO REASON THEREFORE THAT LABOURERS, WHO ARE ALMOST INVARIABLY USED BY THE FORMER CONTRACTORS TO LAY PIPE, INEVITABLY ACQUIRE, CERTAINLY ON A VOLUME BASIS, MORE EXPERIENCE THAN PLUMBERS. MOREOVER, IT IS FAIR TO ASSUME THAT, ON AVERAGE, LABOURERS ENCOUNTER MORE DIVERSE AND DIFFICULT CONDITIONS IN THE LAYING OF PIPE THAN DO PLUMBERS, WHICH LOGICALLY LEAD TO A GREATER PROFICIENCY IN TECHNIQUE. ACCORDINGLY, ON THE BASIS OF SHEER EXPERIENCE IT WOULD SEEM THAT LABOURERS MAY WELL BE BETTER QUALIFIED THAN PLUMBERS TO DO THE WORK HERE IN DISPUTE. WE WOULD ADD THAT THIS VIEW WAS EXPRESSED WITHOUT QUALIFICATION BY AN INDEPENDENT CONSULTING ENGINEER WITH WIDE EXPERIENCE IN THE FIELD WITH WHICH WE ARE HERE CONCERNED.

14. IT IS NOT UNCOMMON THAT THE PIPE HAS TO BE LAID AT A DEPTH OF MANY FEET AND/OR IN TREACHEROUS SUB-SURFACE TERRAIN WHICH NECESSITATES THE INSTALLATION OF SHORING. UNDER THESE CONDITIONS, AND OFTEN DESPITE SHORING, THE POSSIBILITY OF A CAVE-IN IS A REAL AND EVER-PRESENT POSSIBILITY. WHERE CREWS OF BOTH LABOURERS AND PLUMBERS ARE USED, AT TIMES, THE NUMBER OF PERSONS ACTUALLY IN THE TRENCH IS BOUND TO BE INCREASED OVER THE NUMBER REQUIRED IN THE TRENCH, IF A SINGLE CREW OF LABOURERS WERE USED. UNDER THE TYPE OF HAZARDOUS CONDITIONS SUGGESTED ABOVE, ANY ADDITIONAL PERSONS WORKING IN THE TRENCH CAN ONLY INCREASE THE CHANCE AND SERIOUSNESS OF AN ACCIDENT. MOREOVER, SINCE LABOURERS DO THE TRENCHING AND SHORING, THEY ARE SURELY MORE AWARE OF THE RISKS INVOLVED AND MORE ALERT TO THE SIGNS OF A PENDING CAVE-IN THAN PLUMBERS WHO LACK THIS EXPERIENCE. ACCORDINGLY, FOR PURPOSES OF SAFETY, A SINGLE CREW OF LABOURERS IS DESIRABLE AND AGAIN ON THE BASIS OF EXPERIENCE, LABOURERS ARE MORE LIKELY TO BE ADEPT AT ANTICIPATING AND PREVENTING ACCIDENTS WHERE PIPE IS BEING LAID UNDER DANGEROUS CONDITIONS.

15. WE COME NOW TO A CONSIDERATION OF PAST PRACTICE IN THE INDUSTRY IN THE LAYING "ON SITE" OF NON-METALLIC PIPE FOR SANITARY AND STORM SEWERS. AS HAS ALREADY BEEN MENTIONED, BY FAR THE LARGEST AMOUNT OF NON-METALLIC PIPE IS LAID BY SEWER, WATERMAIN AND DRAINAGE CONTRACTORS

USING LABOURERS. IN THE TORONTO AREA, THESE CONTRACTORS GENERALLY ARE EITHER MEMBERS OF THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION OR THE CONCRETE AND DRAINAGE CONTRACTORS ASSOCIATION OR BOTH. THOSE CONTRACTORS WHO HAVE COLLECTIVE AGREEMENTS ARE PARTIES TO AGREEMENTS WITH EITHER LABOURERS LOCAL #183 OR LOCAL #506. NONE OF THE SEWER, WATERMAIN OR DRAINAGE CONTRACTORS HAVE COLLECTIVE AGREEMENTS WITH LOCAL #46, ALL OF THE COMPLAINANT'S AGREEMENTS BEING WITH MECHANICAL CONTRACTORS, WHO, ACCORDING TO THE EVIDENCE, AUTOMATICALLY BECOME MEMBERS OF THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO UPON SIGNING A COLLECTIVE AGREEMENT WITH LOCAL #46. THE GENERAL MANAGERS OF THE FIRST NAMED ASSOCIATIONS TESTIFIED THAT WHILE THE MAJORITY OF NON-METALLIC PIPE LAID BY THEIR MEMBERS WAS DONE FOR MUNICIPALITIES AND OTHER PUBLIC BODIES ON PUBLIC THOROUGHFARES AND RIGHT-OF-WAYS, A SUBSTANTIAL AMOUNT OF PIPE WAS LAID BY THEIR MEMBERS WITHIN THE PROPERTY LINE OF THE PREMISES OF PRIVATE COMPANIES OR PUBLIC BODIES. THEIR EVIDENCE IS SUPPORTED BY THE EVIDENCE OF THE CONSTRUCTION MANAGER OF ONE OF THE LARGEST VOLUME SEWER AND WATERMAIN CONTRACTORS OPERATING IN THE TORONTO AREA AND BY PRINCIPALS OF OTHER SMALLER SEWER, WATER AND DRAINAGE CONTRACTORS IN THE AREA. ON THE OTHER HAND, THE MECHANICAL CONTRACTORS WHO GAVE EVIDENCE ALL OF WHOM ARE BOUND BY THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO AND LOCAL #46, TESTIFIED THAT GENERALLY THEY HAVE BEEN ASSIGNING THE WORK IN DISPUTE TO PLUMBERS, PARTICULARLY DURING THE PAST TWO YEARS. WE WILL HAVE MORE TO SAY ABOUT THEIR EVIDENCE AS TO PAST AND PRESENT PRACTICE AT A LATER STAGE IN THE DECISION.

16. BOTH WILLIAM WEATHERUP AND WILLIAM HOWARD, WHO ARE BUSINESS AGENTS FOR LOCAL #46, AND A PLUMBER JOSEPH TECKNOS, WHO IS A MEMBER OF LOCAL #46, IN THEIR TESTIMONY, LISTED A NUMBER OF NAMED PROJECTS IN THE TORONTO AREA WHERE THE PLUMBERS HAVE LAID THE PIPE IN QUESTION "ON SITE" OVER A PAST NUMBER OF YEARS. ON THE OTHER HAND, MICHAEL REILLY, WHO IS THE PRESIDENT OF LOCAL #183, AND PRINCIPALS OF SEWER, WATERMAIN AND DRAINAGE CONTRACTORS TESTIFIED AS TO MANY SPECIFIC PROJECTS WHERE THE WORK IN DISPUTE WAS PERFORMED BY LABOURERS. THERE IS ALSO EVIDENCE CONCERNING A NUMBER OF PARTICULAR PROJECTS WHERE JURISDICTIONAL DISPUTES HAVE ARISEN BETWEEN THE SAME PARTIES OVER THE SAME KIND OF WORK, ONE OF WHICH WE WILL COMMENT UPON LATER. THE BOARD IS UNABLE TO ASCERTAIN FROM THE ABOVE EVIDENCE THE PERCENTAGE OF THE TOTAL VOLUME OF WORK WHICH IS REPRESENTED BY THE PROJECTS REFERRED TO BY WITNESSES FOR BOTH THE COMPLAINANT AND THE RESPONDENTS. IT WOULD APPEAR FROM ALL THE EVIDENCE, HOWEVER, THAT AT LEAST UNTIL THE END OF 1965 LABOURERS LAID MORE NON-METALLIC SANITARY AND STORM SEWER PIPE "ON SITE" THAN DID PLUMBERS.

17. THE EVIDENCE RELATING TO PAST PRACTICE IN OTHER PARTS OF THE PROVINCE IS QUITE CLEAR. THE EVIDENCE OF THE BUSINESS MANAGER OF THE LABOURERS LOCAL #527, WHICH HAS JURISDICTION OVER AN EIGHT COUNTY AREA IN EASTERN ONTARIO INCLUDING OTTAWA, IS THAT THE LABOURERS HAVE ALWAYS DONE THE WORK IN DISPUTE AND THAT THE PLUMBERS IN THE AREA HAVE NEVER ATTEMPTED TO ASSERT JURISDICTION OVER THE WORK. SIMILARLY, THE EVIDENCE OF THE BUSINESS AGENT FOR LABOURERS LOCAL #1059, WITH JURISDICTION OVER SIX COUNTIES IN WESTERN ONTARIO CENTRED AROUND LONDON, IS THAT THE LAYING OF NON-METALLIC SANITARY AND STORM SEWERS "WITHIN THE PROPERTY LINE" HAS ALWAYS BEEN PERFORMED BY LABOURERS. ACCORDING TO HIS EVIDENCE,

ONLY ON ONE PROJECT HAVE THE PLUMBERS IN THE AREA ATTEMPTED TO ASSERT JURISDICTION OVER THE WORK, AND IN THAT DISPUTE, THE ISSUE WAS RESOLVED IN FAVOUR OF THE LABOURERS.

18. THERE WAS FILED WITH THE BOARD COPIES OF COLLECTIVE AGREEMENTS BINDING UPON LOCAL 183 AND MEMBERS OF CONTRACTORS ASSOCIATIONS AS WELL AS AGREEMENTS BETWEEN LOCAL 183 AND INDIVIDUAL CONTRACTORS. THERE WAS ALSO FILED WITH THE BOARD COPIES OF A NUMBER OF COLLECTIVE AGREEMENTS BETWEEN A VARIETY OF CONTRACTORS AND LABOURERS' LOCAL UNIONS SPANNING ACROSS THE GEOGRAPHIC AREA OF THE PROVINCE. WHILE MOST OF THESE AGREEMENTS PROVIDE A WAGE RATE FOR "PIPE-LAYERS AND CAULKERS", THERE IS NO EVIDENCE, EXCEPT IN THE TORONTO AREA, WHETHER THE NAMED CONTRACTORS ENGAGE IN THE TYPE OF WORK IN DISPUTE. ACCORDINGLY, THESE AGREEMENTS ARE OF LITTLE EVIDENTIARY VALUE TO THE BOARD.

19. THE CONSTITUTIONS OF THE UNITED ASSOCIATION AND THE LABOURERS INTERNATIONAL UNION AND ITS MANUAL OF JURISDICTION ALSO ARE OF LITTLE ASSISTANCE TO THE BOARD, AS THE JURISDICTION CLAIMED BY BOTH UNIONS IS WIDE ENOUGH TO ENCOMPASS THE WORK IN DISPUTE. WE WOULD MENTION HERE ALSO THAT EVIDENCE WAS ADDUCED AND ARGUMENT ADVANCED CONCERNING THE LICENSING REQUIREMENT OF THE METROPOLITAN LICENSING COMMISSION FOR THE LAYING OF DRAINAGE PIPE. WE ARE NOT CALLED UPON TO CONSTRUCE THESE REQUIREMENTS OR DETERMINE WHETHER THEY HAVE BEEN COMPLIED WITH, AS THEY ARE IN NO WAY RELEVANT TO THE DETERMINATION OF THE ISSUE BEFORE US.

20. WE WOULD REFER ALSO TO THE REGULATIONS PERTAINING TO PLUMBERS MADE PURSUANT TO THE APPRENTICESHIP AND TRADESMEN'S QUALIFICATION ACT, 1964, WHICH WEATHERUP PRODUCED AND REFERRED TO WHEN HE SUCCESSFULLY SATISFIED CLEMENTS THAT LOCAL #46 HAD JURISDICTION OVER THE WORK IN DISPUTE. THE FACT OF THE MATTER IS THAT TWO REGULATIONS WERE PASSED, THE FIRST BEING ONTARIO REGULATIONS 227/65 AND THE LATER ONE BEING ONTARIO REGULATIONS 224/66. THE EARLIER REGULATION DEFINES A "PLUMBER" VERY BROADLY. THE LATTER REGULATION, HOWEVER, SPECIFICALLY EXEMPTS FROM THE DEFINITION OF "PLUMBER" PERSONS ENGAGED IN "THE LAYING OF METALLIC OR NON-METALLIC PIPE INTO TRENCHES TO FORM SANITARY OR STORM SEWERS, DRAINS OR WATERMAINS". WHILE THE REGULATION WHICH WEATHERUP SHOWED TO CLEMENTS WAS NOT SPECIFICALLY IDENTIFIED WE ARE SATISFIED THAT IT WAS THE EARLIER REGULATION, THAT OBVIOUSLY SUITED WEATHERUP'S PURPOSE, WHICH HE SHOWED TO CLEMENTS, DESPITE THE FACT THAT THE LATTER REGULATION HAD BEEN PASSED AND WEATHERUP UNDOUBTEDLY WAS AWARE OF ITS CONTENT. BE THAT AS IT MAY, THE REGULATIONS CLEARLY WERE NOT DESIGNED OR INTENDED TO BE USED TO ASSIST ANY TRADE IN ASSERTING ITS JURISDICTIONAL CLAIM TO WORK. THE BOARD ACCORDINGLY DOES NOT PROPOSE TO DEAL FURTHER WITH THEM.

21. BEFORE THE BOARD PROCEEDS TO EVALUATE THE VARIOUS AGREEMENTS AND UNDERSTANDINGS ENTERED INTO OR REACHED BY THE UNITED ASSOCIATION AND THE LABOURERS INTERNATIONAL UNION AND THE COMPLAINANT AND RESPONDENT UNIONS, AS WELL AS OTHER DOCUMENTS WHICH GIVE SOME INDICATION OF THE INTENT OF THE PARTIES, WE WOULD FIRST OUTLINE THOSE AREAS OF WORK IN THE INSTALLATION OF NON-METALLIC PIPE WHICH THE COMPLAINANT AND RESPONDENT UNIONS DO AND DO NOT CLAIM JURISDICTION.



22. LOCAL #46 DOES NOT MAKE ANY CLAIM TO JURISDICTION OVER ANY PART OF THE WORK INVOLVED IN THE INSTALLATION OF SEWERS OR WATERLINES LAID WITHIN PUBLIC OR PRIVATE STREETS OR ROAD ALLOWANCES. WITH REGARD TO "ON SITE" OR THE INSTALLATION OF PIPE FOR STORM OR SANITARY SEWERS WITHIN THE PROPERTY LINE, THE COMPLAINANT DOES NOT CLAIM JURISDICTION OVER THE EXCAVATION OF TRENCHES, ANY SHORING THAT MAY BE REQUIRED, THE LAYING OF THE BEDDING OR THE BACKFILLING. IN THE INSTANT COMPLAINT, WE SHOULD ADD, THE COMPLAINANT IS NOT CLAIMING JURISDICTION OVER THE TRANSPORTING OF THE PIPE TO THE SITE OR THE "STRINGING" OF THE PIPE ALONG THE EDGE OF THE TRENCH. THE COMPLAINANT, HOWEVER, DOES CLAIM JURISDICTION FOR THE LOWERING OF THE PIPING INTO THE TRENCH. THE COMPLAINANT FURTHER CLAIMS JURISDICTION OVER THE ATTACHING OR JOINING OF THE PIPE AND TO THE CHECKING OF THE LEVEL OF THE PIPE. WHILE IT IS NOT PART OF THE ACTUAL INSTALLATION OF THE PIPE, IT IS RELEVANT TO MENTION HERE THAT THE COMPLAINANT DOES NOT CLAIM JURISDICTION OVER THE CONSTRUCTION OF ANY MANHOLES, CATCH-BASINS, VALVE CHAMBERS, WHICH MAY BE REQUIRED TO BE INSTALLED BETWEEN THE BUILDING OR BUILDINGS ON THE SITE AND THE PROPERTY LINE.

23. THE LABOURERS, FOR THEIR PART, CLAIM NO JURISDICTION OVER THE INSTALLATION OF ANY PIPE INSIDE THE BUILDING OR BUILDINGS ON THE SITE, NOR DO THEY CLAIM JURISDICTION FOR THE LAYING OF NON-METALLIC PIPE FROM THE BUILDING OR BUILDINGS ON THE SITE TO THE FIRST MANHOLE OR CATCH-BASIN NEAREST TO THE BUILDING. THE LABOURERS DO, HOWEVER, CLAIM JURISDICTION FOR THE LAYING OF NON-METALLIC PIPE FOR SANITARY AND STORM SEWERS FROM THE FIRST MANHOLE, CATCH-BASIN OR OTHER "NEUTRALIZING" POINTS ADJACENT TO THE BUILDING OR BUILDINGS TO THE PROPERTY LINE OF THE PREMISES. WHERE THERE ARE NO MANHOLE OR CATCH-BASIN OR "NEUTRALIZING" POINT BETWEEN THE BUILDING OR BUILDINGS ON SITE AND THE PROPERTY LINE, THE RESPONDENT UNION CONCEDES THAT THE LAYING OF THE PIPE FOR STORM AND SANITARY SEWERS FALLS WITHIN THE JURISDICTION OF THE PLUMBERS. THIS CONCESSION, HOWEVER, HAS AN IMPORTANT QUALIFICATION ALTHOUGH NOT RELEVANT IN THE INSTANT CASE. WHERE THERE ARE NO MANHOLES OR CATCH-BASINS WITHIN THE PROPERTY LINE TO WHICH THE LATERAL PIPES FROM THE BUILDING ARE CONNECTED, THE JURISDICTION OF THE PLUMBERS IS CONFINED TO THE LAYING OF THE LATERAL SANITARY AND STORM SEWER PIPES FROM THE BUILDING OR BUILDINGS TO THE MAIN GATHERING PIPE LINES. FOR INSTANCE, THE LABOURERS DO NOT CLAIM JURISDICTION FOR THE LAYING OF NON-METALLIC STORM OR SEWER PIPE FROM RESIDENTIAL HOUSES TO THE MAIN STORM AND SEWER TRENCHES ON THE STREET LINE. IF, HOWEVER, THERE ARE SECONDARY SEWER LINES, OR FOR THAT MATTER WATERLINES WHICH EXTEND FROM THE MAIN LINES ON PUBLIC THOROUGH FARES ON TO THE SITE, TO WHICH THE LATERAL SEWER OR WATERLINES FROM THE BUILDINGS ON THE PREMISES ARE CONNECTED, THEN THE LABOURERS CLAIM JURISDICTION OVER THE LAYING OF THE PIPE IN THE INSTALLATION OF SECONDARY "ON SITE" SEWERS AND WATERMAINS.

24. WE NOW PROPOSE TO DEAL WITH THE ABOVE REFERRED TO AGREEMENTS AND UNDERSTANDINGS AND THE RELATED DOCUMENTARY ENTERED INTO BY THE COMPLAINANT AND RESPONDENT LOCALS AND THEIR PARENT BODIES. WE INTEND TO DO SO LARGELY IN CHRONOLOGICAL ORDER IN AN EFFORT TO GIVE SOME LOGICAL SEQUENCE TO EVENTS.



25. A MEMORANDUM OF AGREEMENT WAS ENTERED INTO BY COMMITTEES REPRESENTING THE UNITED ASSOCIATION AND THE INTERNATIONAL LABOURERS' UNION DATED JANUARY 23, 1941, WHICH WAS APPROVED BY THE GENERAL PRESIDENTS OF BOTH UNIONS. PARAGRAPH #1 OF THE MEMORANDUM PROVIDES THAT THE AGREEMENT IS "OVER ALL WORK ON SUBWAYS, TUNNELS, HIGHWAYS, VIADUCTS, STREETS AND ROADWAYS IN CONNECTION WITH SEWERS AND WATER MAINS". PARAGRAPH #4 OF THE SAME MEMORANDUM OF AGREEMENT READS "ALL OF THE LAYING OF CLAY, TERRA COTTA, IRONSTONE, VITRIFIED CONCRETE OR NON-METALLIC PIPE AND THE MAKING OF JOINTS FOR MAIN AND SIDE SEWERS AND DRAINAGE ONLY IS THE WORK OF THE LABORERS".

26. IT APPEARS THAT THE GENERAL PRESIDENTS OF TWO UNIONS SUBSEQUENTLY THAT YEAR APPOINTED YET TWO OTHER COMMITTEES TO INTERPRET AND CLARIFY THE ABOVE AGREEMENT OF JANUARY 23RD, 1941. THE LATTER COMMITTEES, WHOSE COMPOSITION, IN PART, WAS THE SAME AS THE EARLIER COMMITTEES, BY LETTER DATED AUGUST 29TH, 1941, ADDRESSED TO THE GENERAL PRESIDENTS, STATED THAT THEY HAD AGREED ON THE INTERPRETATION TO BE PLACED ON PARAGRAPHS #1 AND #4. THEY ENDORSED A COPY OF THE INTERPRETATION AGREED UPON AND RECOMMENDED THAT THE GENERAL PRESIDENTS SIGN THE INTERPRETATION AGREEMENT. THE SIGNATURES OF THE TWO GENERAL PRESIDENTS DO NOT APPEAR ON THE LATTER DOCUMENT FILED WITH THE BOARD. THE COMMITTEE, HOWEVER, INTERPRETED PARAGRAPH #1 OF THE JANUARY 23RD, 1941 AGREEMENT TO MEAN THAT THE AGREEMENT WAS "OVER ALL WORK ON SUBWAYS, TUNNELS, HIGHWAYS, VIADUCTS, STREETS, ROADWAYS, AND BUILDING CONSTRUCTION IN CONNECTION WITH SEWERS AND WATER MAINS". THE WORDS "BUILDING CONSTRUCTION" ARE THE ONLY ADDED WORDS TO THE ORIGINAL PARAGRAPH #1. PARAGRAPH #4 WAS INTERPRETED TO MEAN: "THE INSTALLATION AND LAYING OF ALL CLAY, TERRA COTTA, IRONSTONE, VITRIFIED, CONCRETE OR NON-METALLIC PIPE AND THE MAKING OF JOINTS FOR MAIN AND SIDE SEWERS AND DRAINAGE OUTSIDE OF ANY BUILDING OR STRUCTURE IS THE WORK OF THE LABORERS. ALL INSTALLATIONS INSIDE THE BUILDING OR STRUCTURE SHALL BE THE WORK OF THE MEMBERS OF THE UNITED ASSOCIATION". THE WORDS "OUTSIDE OF ANY BUILDING OR STRUCTURE" IN THE SECOND LAST QUOTED SENTENCE AND THE LAST QUOTED SENTENCE ARE THE ADDITIONS TO THE ORIGINAL PARAGRAPH #4.

27. TAKING THE JANUARY 23RD, 1941 MEMORANDUM OF AGREEMENT BY ITSELF, IT WOULD APPEAR TO HAVE NO APPLICATION TO THE INSTANT DISPUTE. THE SUBSEQUENT INTERPRETATION MEMORANDUM, HOWEVER, CLEARLY RELATES THE EARLIER AGREEMENT TO BUILDING CONSTRUCTION AND AWARDS THE INSTALLATION OF ALL NON-METALLIC MAIN, SEWER AND DRAINAGE PIPES OUTSIDE OF ANY BUILDING OR STRUCTURE TO THE LABOURERS. THE ABSENCE OF THE SIGNATURE OF THE GENERAL PRESIDENTS INDICATES THAT THE FINAL SEAL OF APPROVAL WAS NOT GIVEN TO THE INTERPRETATION MEMORANDUM. THE OVERLAPPING OF PERSONNEL FOR BOTH UNIONS OF THE ORIGINAL COMMITTEES, HOWEVER, INCLINES US TO THE VIEW THAT SUBSEQUENT DOCUMENT REFLECTS THE TRUE INTENT OF THE ORIGINAL COMMITTEES DRAFTING THE JANUARY 23RD, 1941 AGREEMENT.

28. THERE WAS FILED WITH THE BOARD THE "GREEN BOOK" WHICH WEATHERUP SHOWED TO CLEMENTS. THIS BOOK CONTAINS THE PLAN FOR THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES WHICH WAS ESTABLISHED BY THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT,

AFL-CIO. AS WELL AS ESTABLISHING THE PLAN, THE GREEN BOOK ALSO CONTAINS AGREEMENTS ENTERED INTO BY VARIOUS TRADES AND DECISIONS RENDERED BY THE NATIONAL JOINT BOARD AND NATIONAL REFEREES TO WHOM THE FINAL APPEAL OF DECISIONS OF THE NATIONAL JOINT BOARD ARE MADE.

29. AT PAGE 122 OF THE GREEN BOOK THERE APPEARS A DECISION RENDERED BY NATIONAL REFEREE WILLIAM L. HUTCHESON IN A DISPUTE BETWEEN THE UNITED ASSOCIATION AND THE INTERNATIONAL LABOURERS UNION "IN THE MATTER OF INSTALLATION OF NON-METALLIC PIPING FOR SEWERS". THIS IS THE "HUTCHESON" DECISION TO WHICH WEATHERUP REFERRED CLEMENTS. THE DECISION READS IN PART "THAT THE LAYING OF LATERAL SEWER PIPE FROM MAIN SEWER INTO DWELLING, OR FROM INSIDE PROPERTY LINE TO DWELLING IS WORK THAT SHOULD BE DONE BY, OR UNDER THE SUPERVISION OF, MEMBERS OF THE UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF THE UNITED STATES AND CANADA". HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES AS TO THE INTERPRETATION THAT SHOULD BE PLACED ON THE DECISION, IT IS OUR CONCLUSION THAT THE ONLY REASONABLE CONSTRUCTION OF THE WORD "DWELLING" IS THAT IT MEANS "A PLACE OF RESIDENCE". IN OUR OPINION, COMMERCIAL OR INDUSTRIAL BUILDINGS ARE NOT CONTEMPLATED BY THE DECISION. AS WAS INDICATED EARLIER, THE LABOURERS DO NOT CHALLENGE THE HUTCHESON DECISION.

30. A LETTER OF UNDERSTANDING WAS SIGNED ON OCTOBER 5TH, 1961 BY S. NEWMARCH, WHO WAS IDENTIFIED AT THE HEARING AS THE BUSINESS MANAGER OF LOCAL #46, AND E. LINESS, THE PRESIDENT OF LOCAL #506. THE DOCUMENT WAS ALSO APPROVED AND SIGNED BY JOSEPH CONNOLLY A GENERAL ORGANIZER FOR THE UNITED ASSOCIATION AND H. J. GREEN, AN INTERNATIONAL REPRESENTATIVE OF THE LABOURERS INTERNATIONAL UNION. THE BODY OF THE LETTER READS AS FOLLOWS:

1. SCOPE OF WORK: STORM, SANITARY, COMBINATION OR PROCESS SEWERS FROM BUILDINGS TO FIRST MANHOLE OR WHERE NO MANHOLE TO PROPERTY LINES IS THE WORK OF THE UNITED ASSOCIATION, LOCAL UNION #46.
2. WHERE THERE IS A NON-METALLIC DRAINAGE LINE, STORM, SANITARY OR COMBINATION INSIDE THE PROPERTY LINE WITHOUT MANHOLES FOR THE PURPOSE OF RECEIVING LATERAL FROM THE BUILDINGS AND YARD DRAINAGE, THE PLUMBER WILL INSTALL LATERALS FROM BUILDING TO THE MAIN GATHERING LINES ONLY, THE LABOURER WILL INSTALL THE MAIN GATHERING LINE AND THE PROPERTY DRAINAGE LATERALS.
3. NON-METALLIC STORM AND SANITARY SEWERS FROM BUILDINGS, AFTER LEAVING FIRST MAN-HOLE IS THE WORK OF THE LABOURERS' UNION, LOCAL #506.
4. ALL PROCESS SEWERS REGARDLESS OF MATERIAL, WITHIN THE PROPERTY LIMITS, IS THE WORK OF THE UNITED ASSOCIATION, LOCAL #46.

5. NON-METALLIC DRAINAGE FOR PARKING LOTS AND PROPERTY, APART FROM BUILDINGS IS THE WORK OF THE LABOURERS' UNION, LOCAL #506.
6. ALL DOMESTIC, FIRE AND PROCESS WATER MAIN AND SERVICES INCLUDING METALLIC DRAINAGE PIPING WITHIN PROPERTY LIMITS, IS THE WORK OF THE UNITED ASSOCIATION, LOCAL UNION #46.

THE PARTIES FURTHER AGREED THAT THE AGREEMENT COVERS ALL THE TERRITORY WITHIN THE BOUNDARIES OF THE 7TH LINE AT OAKVILLE ON THE WEST, THE WESTERN BOUNDARIES OF WHITBY ON THE EAST, AND THE SOUTHERN BOUNDARY OF BARRIE ON THE NORTH.

31. WILLIAM WEATHERUP AND WILLIAM HOWARD TESTIFIED THAT THE ABOVE AGREEMENT OF OCTOBER 5TH, 1961 WAS NOT RATIFIED BY EITHER THE MEMBERSHIP OF LOCAL #46 NOR WAS IT APPROVED BY THE UNITED ASSOCIATION IN WASHINGTON. WE WOULD FIRST POINT OUT THAT NO EVIDENCE WAS ADDUCED WHICH SATISFIES THE BOARD THAT THE AGREEMENT REQUIRED THE RATIFICATION OF THE MEMBERSHIP OF LOCAL #46. SECONDLY, WE NOTE THAT NEITHER WEATHERUP NOR HOWARD HELD ANY OFFICE WITH LOCAL #46 AT THE TIME THE AGREEMENT WAS SIGNED, AND WE ACCORDINGLY HAVE SERIOUS RESERVATIONS AS TO THE WEIGHT THAT CAN BE GIVEN TO THEIR TESTIMONY WITH RESPECT TO THE AGREEMENT. THE ONLY SIGNATORY TO THE AGREEMENT WHO, BY THE TIME OF THE BOARD HEARINGS, COULD HAVE GIVEN EVIDENCE RELATING TO THE CIRCUMSTANCES SURROUNDING THE SIGNING OF THE AGREEMENT WAS STANLEY NEWMARCH, THE BUSINESS MANAGER OF LOCAL #46. HE WAS NOT CALLED BY THE COMPLAINANT TO TESTIFY.

32. WE NOTE WITH INTEREST, HOWEVER, A PORTION OF THE MINUTES OF A MEETING HELD BETWEEN REPRESENTATIVES OF THE PLUMBERS AND THE LABOURERS, WHICH WERE FILED WITH THE BOARD. THESE ARE MINUTES OF A MEETING HELD IN TORONTO ON MAY 11TH, 1966 BETWEEN REPRESENTATIVES OF THE PLUMBERS AND THE LABOURERS TO WHICH WE WILL SUBSEQUENTLY REFER. THE FOLLOWING STATEMENT IN THE MINUTES (WHICH WERE APPROVED BY THE PLUMBERS) IS ATTRIBUTED TO JOSEPH CONNOLLY IN WHAT OBVIOUSLY IS A REFERENCE TO THE 1961 AGREEMENT: "THIS DOCUMENT THAT WAS ORIGINALLY SIGNED BY BRO. GREEN AND MYSELF AND LOCAL 506 AND LOCAL 46, IS STILL THE BEST, OF COURSE, WE MUST BRING IT UP TO DATE AND WITH SOME MODIFICATION WE HAVE A BASIS FOR AGREEMENT". IN OUR OPINION, THE STATEMENT MADE BY CONNOLLY AS LATE AS 1966 STRONGLY INDICATES THAT HE AT LEAST CONSIDERED THE AGREEMENT OF 1961 TO BE AN EFFECTIVE DOCUMENT, SETTLING THE JURISDICTIONAL DISPUTES THAT EXISTED AT THAT TIME BETWEEN LOCAL #506 AND LOCAL #46. MOREOVER, ACCORDING TO THE EVIDENCE IT WAS ONLY IN THE SUMMER OF 1965 THAT LOCAL #46 AND THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO SUDDENLY DECIDED THAT THE 1961 AGREEMENT WAS NULL AND VOID.

33. HAVING REGARD TO ALL THE EVIDENCE, AND HAVING PARTICULAR REGARD TO THE FACT THAT THE 1961 AGREEMENT WAS SIGNED ON BEHALF OF LOCAL #46 BY ITS BUSINESS MANAGER AND A GENERAL ORGANIZER OF THE UNITED ASSOCIATION, IT IS OUR FINDING THAT AT THE TIME THE AGREEMENT WAS ENTERED INTO BY THE PARTIES BOTH LOCAL #46 AND LOCAL #506 CONSIDERED



THEMSELVES TO BE BOUND BY THE AGREEMENT EVEN IF SUBSEQUENTLY THE AGREEMENT WAS NOT ADHERED TO BY LOCAL #46.

34. A DOCUMENT DATED AUGUST 6, 1965 ADDRESSED TO ALL LOCAL UNIONS OF THE UNITED ASSOCIATION AND THE LABOURERS INTERNATIONAL UNION WAS SIGNED AND ISSUED BY THE GENERAL PRESIDENTS OF THE TWO UNIONS BY WHICH THE UNITED ASSOCIATION AND THE LABOURERS INTERNATIONAL UNION, AMONG OTHER THINGS, AGREED AS FOLLOWS:

THE AGREEMENT SIGNED AND EXECUTED JANUARY 23, 1941 BETWEEN THE UNITED ASSOCIATION AND THE LABORERS INTERNATIONAL IS RECOGNIZED AS AN EXISTING AGREEMENT.

THAT THE HUTCHESON DECISION RENDERED IN NOVEMBER 1945, AND REFERENCE MATERIAL AS PRINTED IN THE NEW "GREEN BOOK" ON PAGES 122-129, IS RECOGNIZED UNDER THE CONSTITUTION OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT AND THE RULES PROMULGATED BY THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES.

35. THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO ISSUED A BULLETIN DATED SEPTEMBER, 17TH, 1965, OVER THE SIGNATURE OF F. C. WHYTE, THE GENERAL MANAGER. THE RELEVANT PORTION OF THIS BULLETIN TITLED "PIPELINE" WHICH IS ADDRESSED TO ALL MEMBERS OF THE ASSOCIATION READS AS FOLLOWS:

JURISDICTION OF WORK - UNDERGROUND PIPING

THE AGREEMENT BETWEEN LOCAL 46 AND LABOURERS' UNION LOCAL #506, CONCERNING THE JURISDICTION OF WORK ON UNDERGROUND PIPING, UNDER WHICH WE HAVE BEEN OPERATING SINCE 1961, IS NOW NULL AND VOID.

IN PLACE OF THIS AGREEMENT, EFFECTIVE THIS DATE (SEPTEMBER 17TH, 1965) IN ASSIGNING THIS WORK YOU WILL BE GUIDED BY AN AGREEMENT DATED AUGUST 6TH, 1965 SIGNED BY THE GENERAL PRESIDENTS OF THE UNITED ASSOCIATION AND THE INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA, AFL-CIO, WHICH STATES:

"ALL PIPING WITHIN THE PROPERTY LINE SHALL BE THE WORK OF THE UNITED ASSOCIATION."

36. WE WOULD FIRST POINT OUT THAT THE EVIDENCE OF THE MECHANICAL CONTRACTORS CALLED AS WITNESSES BY THE COMPLAINANT, WITH ONE EXCEPTION,



IS THAT PRIOR TO THE ISSUANCE OF THE ABOVE BULLETIN, THEY, IN FACT, EVEN IF THEY WERE NOT AWARE OF IT, CONFORMED WITH THE TERMS OF THE 1961 AGREEMENT. THAT IS TO SAY, THEY GENERALLY SUBCONTRACTED TO SEWER AND DRAINAGE CONTRACTORS, USING LABOURERS, THE TOTAL INSTALLATION OF NON-METALLIC DRAINAGE, SEWER AND WATERMAIN PIPES FROM THE FIRST MANHOLE, CATCH-BASIN OR NEUTRALIZING POINT NEAREST TO BUILDING TO THE PROPERTY LINE OF THE PREMISES OF THE BUILDING SITE. SINCE THE ISSUANCE OF THE BULLETIN, HOWEVER, THE MECHANICAL CONTRACTORS USUALLY HAVE DONE THE WORK THEMSELVES EMPLOYING MEMBERS OF LOCAL #46.

37. CLEARLY, THE AGREEMENT OF AUGUST 6TH, 1965 CAN IN NO WAY BE INTERPRETED AS A REVOCATION OF THE 1961 AGREEMENT, NOR WAS THERE ANY OTHER DOCUMENT FILED WITH THE BOARD WHICH IN ANY WAY AFFECTED THE 1961 AGREEMENT. IN OTHER WORDS, THE STATEMENT IN THE BULLETIN THAT THE 1961 AGREEMENT WAS NULL AND VOID WAS WITHOUT FOUNDATION. EVEN MORE REPREHENSIBLE IS THE FACT THAT THE BULLETIN PURPORTS TO QUOTE VERBATIM FROM THE AUGUST 6TH, 1965 AGREEMENT. THE REALITY OF THE SITUATION IS, HOWEVER, THAT THE ALLEGED "QUOTE" IS AN OUTRIGHT FABRICATION AS WELL AS BEING COMPLETELY FALSE AS TO CONTENT. THE ONLY CONCLUSION THAT CAN BE DRAWN FROM THIS BULLETIN IS THAT THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO, WITH DELIBERATE INTENT, ATTEMPTED AND UNFORTUNATELY SUCCEEDED IN MISLEADING ITS MEMBERS AS TO THE JURISDICTION OF THE PLUMBERS WITH RESPECT TO THE LAYING OF PIPE "ON SITE" IN THE TORONTO AREA. THE ONLY OTHER EXPLANATION FOR THE BULLETIN IS THAT THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO IS GUILTY OF GROSS NEGLIGENCE IN ITS RESEARCH PRIOR TO ISSUING THE BULLETIN. IT WAS THIS BULLETIN WE WOULD ADD WHICH WEATHERUP SHOWED TO CLEMENTS.

38. THE EVIDENCE CONFIRMS THE FACT THAT SINCE THE ISSUING OF THE SEPTEMBER 17TH, 1965 BULLETIN, THERE HAS BEEN AN EVER INCREASING NUMBER OF SERIOUS JURISDICTIONAL DISPUTES OVER THE LAYING OF NON-METALLIC PIPE "WITHIN THE PROPERTY LINE". THESE DISPUTES GENERALLY HAVE ARISEN WHEN LOCAL #46 HAS CLAIMED JURISDICTION TO THIS WORK AFTER THE WORK HAS BEEN SUBCONTRACTED BY THE GENERAL OR MECHANICAL CONTRACTOR ON THE JOB TO A SEWER, WATERMAIN OR DRAINAGE CONTRACTOR USING LABOURERS TO DO ALL OF THE WORK IN INSTALLING THE PIPE. ON AT LEAST TWO PROJECTS WHERE A DISPUTE HAS ARISEN AND LOCAL #46 HAS SUCCEEDED IN HAVING THE WORK RE-ASSIGNED TO PLUMBERS, THE EVIDENCE SUGGESTS THAT THE RE-ASSIGNMENT HAS BEEN MADE UNDER THREAT BY LOCAL #46 TO THE MECHANICAL OR GENERAL CONTRACTOR ON THE PROJECT TO WITHDRAW ALL ITS PLUMBERS NOT ONLY FROM THE PARTICULAR PROJECT BUT ALSO FROM EVERY OTHER PROJECT OF THE MECHANICAL OR GENERAL CONTRACTOR IN THE AREA.

39. WE WOULD MENTION HERE THAT IT APPEARS FROM THE EVIDENCE THAT FOR SOME TIME PRIOR TO 1964, A DISPUTE EXISTED BETWEEN LOCAL 183 AND LOCAL 506 AS TO WHICH OF THE LABOURERS LOCAL SHOULD HAVE JURISDICTION OVER THE WORK IN QUESTION. THIS DISPUTE WAS SETTLED BY A DIRECTION FROM THE GENERAL PRESIDENT TO THE OFFICERS AND MEMBERS OF THE TWO LOCALS DATED DECEMBER 10TH, 1964, AWARDING TO LOCAL 183 JURISDICTION OVER ALL SEWER AND WATER INSTALLATION, INCLUDING THOSE UTILITIES

CONSTRUCTED ON BUILDING SITES. PRIOR TO THAT TIME LOCAL 506 HAD BEEN EXERCISING JURISDICTION OVER MOST OF THIS TYPE OF WORK. ACCORDING TO THE EVIDENCE OF MICHAEL REILLY, AFTER THE SETTLEMENT OF THE DISPUTE BETWEEN THE TWO LOCAL UNIONS, HE ENDEAVOURED TO GET LOCAL #46 TO SIGN AN AGREEMENT WITH LOCAL 183, SIMILAR TO THE 1961 AGREEMENT WHICH IT HAD SIGNED WITH LOCAL 506. HIS EFFORTS WERE NOT SUCCESSFUL. LOCAL 183, HOWEVER, STILL CONSIDERED THE JURISDICTION OF THE LABOURERS AND PLUMBERS SET OUT IN THE 1961 AGREEMENT TO BE BINDING ON ITSELF AND LOCAL #46.

40. WE HAVE ALREADY REFERRED TO THE FACT THAT SINCE THE ISSUING OF THE BULLETIN OF SEPTEMBER 17TH, 1965, BY THE MECHANICAL CONTRACTORS ASSOCIATION OF TORONTO, THERE HAVE BEEN A GROWING NUMBER OF JURISDICTIONAL DISPUTES IN THE METROPOLITAN TORONTO AREA OF THE SAME NATURE AS THE INSTANT DISPUTE, THE BRAMPTON HIGH SCHOOL, THE SHERATON PARK PROJECT, YORK UNIVERSITY AND THE PILKINGTON GLASS PROJECT TO NAME A FEW. IN THE SPRING OF 1966, HOWEVER, A SERIES OF FOUR MEETINGS BETWEEN MARCH 29TH AND MAY 17TH TOOK PLACE BETWEEN REPRESENTATIVES OF THE UNITED ASSOCIATION AND THE LABOURERS INTERNATIONAL UNION. BOTH LOCAL #46 AND LOCAL #183 WERE REPRESENTED AT THESE MEETINGS, THE MINUTES OF WHICH WERE FILED WITH BOARD. THE ORIGINAL PURPOSE OF THE FIRST MEETING WAS TO DEAL WITH THE OBJECTIONS OF LOCAL #183 TO ONTARIO REGULATION 227/65 REGARDING PLUMBERS, WHICH WAS REFERRED TO EARLIER. THE PARTIES, HOWEVER, AT THAT MEETING AND THE SUCCEEDING MEETINGS ATTEMPTED TO REACH AGREEMENT ON THEIR RESPECTIVE JURISDICTIONS IN THE LAYING OF PIPE. THE PARTIES WERE NOT SUCCESSFUL, HOWEVER, AND AT THE LAST MEETING ON MAY 17TH, IT WAS AGREED THAT D. W. FORGIE, AN INTERNATIONAL REPRESENTATIVE OF THE LABOURERS, WOULD MEET WITH JOSEPH CONNOLLY TO DISCUSS THE AREAS OF DISAGREEMENT BETWEEN THE TWO UNIONS AND THAT THEY WOULD THEN ISSUE A DIRECTIVE TO BOTH UNIONS SETTLING THEIR RESPECTIVE JURISDICTIONS.

41. FORGIE AND CONNOLLY DID MEET DURING JUNE OF 1966. BEFORE ANY DIRECTIVE HAD BEEN ISSUED, HOWEVER, A DISPUTE AROSE OVER THE LAYING OF "ON SITE" NON-METALLIC SANITARY AND STORM SEWER PIPE ON THE PILKINGTON GLASS PROJECT. THE MECHANICAL CONTRACTORS ASSIGNED THE WORK TO CON-DRAIN LIMITED, A SEWER AND WATERMAIN CONTRACTOR EMPLOYING LABOURERS. LOCAL #46 THEREUPON CLAIMED JURISDICTION FOR THE WORK. LOCAL #46 AGREED TO ALLOW MEMBERS OF LOCAL 183 TO CONTINUE TO DO THE WORK PENDING THE OUTCOME OF A MEETING WHICH TOOK PLACE ON THE EVENING OF JUNE 22ND. THE MEETING WAS ATTENDED BY REPRESENTATIVES OF ALL GENERAL, MECHANICAL AND SEWER AND WATERMAIN CONTRACTORS ON THE PROJECT AND REPRESENTATIVES OF THE UNITED ASSOCIATION AND THE LABOURERS INTERNATIONAL UNION. HAVING REGARD TO THE MINUTES OF THAT MEETING WHICH ARE ON FILE WITH THE BOARD, AND THE VIVA VOCE EVIDENCE OF JACK TAYLOR, THE PRESIDENT OF CON-DRAIN, ALL PARTIES AGREED TO SETTLE THE DISPUTE ON THE BASIS OF A SETTLEMENT REACHED BETWEEN THE TWO UNIONS ON A PROJECT IN THE UNITED STATES, WHICH GAVE JURISDICTION FOR THE WORK IN DISPUTE TO THE LABOURERS. ACCORDING TO TAYLOR, THIS AGREEMENT WAS TO APPLY TO ALL SIMILAR PROJECTS IN THE AREA.

42. FOLLOWING THE MEETINGS BETWEEN FORGIE AND CONNOLLY, A LETTER DATED JUNE 28TH, ADDRESSED TO THE GENERAL PRESIDENTS OF THE UNITED ASSOCIATION AND THE LABOURERS INTERNATIONAL UNION WAS ISSUED OVER THE

SIGNATURES OF CONNOLLY FOR THE PLUMBERS AND S. JENSEN FOR THE LABOURERS.  
THE BODY OF THE LETTER READS AS FOLLOWS:

RE: JURISDICTIONAL PROBLEMS  
PROVINCE OF ONTARIO

FOLLOWING NUMEROUS MEETINGS BETWEEN PROVINCIAL COMMITTEES OF OUR RESPECTIVE TRADES AND PURSUANT TO TELEGRAMS RECEIVED FROM OUR RESPECTIVE GENERAL PRESIDENTS ON THIS ISSUE, WE HAVE AGAIN MET THIS DATE AND RECOMMEND TO YOU ACCEPTANCE OF THE ATTACHED UNDERSTANDING DESIGNED TO BRING ABOUT A BETTER RELATIONSHIP BETWEEN OUR TRADES IN THE PROVINCE OF ONTARIO.

43. ATTACHED TO THE LETTER WAS A MEMORANDUM OF UNDERSTANDING BETWEEN THE TWO UNIONS IN THE FOLLOWING TERMS:

IT IS THE PURPOSE OF THIS UNDERSTANDING TO CREATE AND ESTABLISH AN ATMOSPHERE OF GOOD WILL AND FRATERNAL BROTHERHOOD, IN ORDER TO STABILIZE AND IMPROVE THE WORKING RELATIONS BETWEEN OUR TWO ORGANIZATIONS, TO GIVE SUBSTANCE TO EXISTING BARGAINING RELATIONSHIPS, AND TRADE PRACTICES AS IN THE AREA, AND TO BRING ABOUT AN INTELLIGENT, CONSTRUCTIVE AND AMICABLE SETTLEMENT OF JURISDICTIONAL DISPUTES BETWEEN THE TWO INTERNATIONAL UNIONS, THROUGHOUT THE PROVINCE OF ONTARIO.

1) ALL DIGGING, BREAKING OF CONCRETE, BACK-FILLING, TAMPING, RESURFACING, AND ALL SHORING OF ALL DITCHES IN PREPARATION FOR THE LAYING OF ALL PIPE SHALL BE PERFORMED BY MEMBERS OF THE LIU OF N.A.

2) ALL LOADING, UNLOADING, HANDLING, DISTRIBUTION, AND LAYING OF PIPE, IRRESPECTIVE OF MATERIAL, INSIDE THE BUILDING PROPER, AND FROM THE FOUNDATION LINE PROPER OUT TO THE FIRST "Y", "T", MANHOLE, CATCHBASIN, OR NEUTRALIZING POINT, SHALL BE PERFORMED BY MEMBERS OF THE UA.

3) THE CONSTRUCTION OF ALL MANHOLES, CATCHBASINS, VALVE CHAMBERS, ETC., IRRESPECTIVE OF MATERIAL, SHALL BE PERFORMED BY MEMBERS OF THE LIU OF NA.

4) ALL LOADING, UNLOADING, HANDLING, DISTRIBUTION, AND WORK IN CONNECTION WITH THE LAYING OF PIPE, IRRESPECTIVE OF MATERIAL, FROM AND INCLUDING THE FIRST "Y", "T", MANHOLE, CATCHBASIN OR NEUTRALIZING POINT, SHALL BE PERFORMED BY MEMBERS OF THE LIU OF NA.



5) ALL PIPE, IRRESPECTIVE OF MATERIAL, WITHIN ROAD, STREET, ALLOWANCES SHALL BE LAID BY MEMBERS OF THE LIU OF NA.

THE ATTACHED MEMORANDUM WAS ACCEPTED BY THE GENERAL PRESIDENT OF THE LABOURERS INTERNATIONAL UNION BUT DID NOT RECEIVE THE APPROVAL OF THE GENERAL PRESIDENT OF THE UNITED ASSOCIATION. THE AGREEMENT, HOWEVER, ACCORDING TO THE EVIDENCE, REFLECTS THE AGREEMENT REACHED ON THE PILKINGTON GLASS PROJECT.

44. THE EVIDENCE PLACED BEFORE THE BOARD IN THE INSTANT COMPLAINT, WHICH WE HAVE DEALT WITH AT SOME CONSIDERABLE LENGTH IN THE PRECEDING PAGES, NEEDS NO FURTHER COMMENT. HAVING REGARD TO ALL OF THE CRITERIA WHICH THE BOARD HAS TAKEN INTO ACCOUNT IN DETERMINING THE DIRECTIONS WHICH IT HAS MADE IN PREVIOUS COMPLAINTS UNDER SECTION 66 OF THE ACT, SUCH AS THE NATURE OF THE WORK, THE SKILLS INVOLVED, SAFETY, EFFICIENCY AND ECONOMY IN THE PERFORMANCE OF THE WORK, PAST PRACTICE AND PREVIOUS AWARDS, AGREEMENTS AND UNDERSTANDINGS, WE ARE SATISFIED THAT THE WORK IN DISPUTE IN THE INSTANT COMPLAINT CLEARLY FALLS WITHIN THE JURISDICTION OF THE LABOURERS (SEE CANADA MILLWRIGHT LIMITED CASE, BOARD FILE NO. 13034-67-JD).

45. THE BOARD ACCORDINGLY DIRECTS THAT THE RESPONDENT COMPANY CONTINUE TO ASSIGN TO LABOURERS, IN ACCORDANCE WITH THE PROVISIONS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE COMPANY AND THE RESPONDENT LABOURERS LOCAL #506, THE WORK OF LAYING NON-METALLIC SANITARY AND STORM SEWERS FROM AND INCLUDING THE FIRST MANHOLES, CATCH-BASINS OR OTHER "NEUTRALIZING" POINTS OUTSIDE THE BUILDINGS TO THE PROPERTY LINE OF THE PREMISES OF THE NORTHERN ELECTRIC COMPANY LIMITED AT BRAMPTON.

13212-67-JD: LOCAL UNION NO. 1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. SIROTEK CONTRACTORS LIMITED AND LOCAL UNION NO. 1081, LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: J. G. WARD, N. C. HILBORN, G. BOEHM AND F. BERGER FOR THE COMPLAINANT, G. GARDNER AND R. STARK FOR THE RESPONDENT COMPANY, A. FRANK AND U. ROSSINI FOR THE RESPONDENT UNION.

DECISION OF J. H. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE. AUGUST 2, 1967.

1. THE STYLE OF CAUSE IS AMENDED BY ADDING LOCAL UNION NO. 1081, LABOURERS INTERNATIONAL UNION OF NORTH AMERICA AS A RESPONDENT IN THIS MATTER.



2. THE COMPLAINANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION TO THE RESPONDENT EMPLOYER PURSUANT TO SECTION 66 OF THE LABOUR RELATIONS ACT REQUIRING THE SAID EMPLOYER TO ASSIGN THE WORK OF RELEASING AND STRIPPING ALL RE-USABLE PANEL WALL FORMS WHICH ARE BEING USED ON THE PHYSICAL EDUCATION BUILDING AT THE UNIVERSITY OF WATERLOO TO MEMBERS OF THE COMPLAINANT TRADE UNION.

3. THE RESPONDENT EMPLOYER HAS THE CONTRACT AS GENERAL CONTRACTOR FOR THE CONSTRUCTION OF THE ABOVE NAMED BUILDING PROJECT. THE DESIGN OF THE BUILDING CALLS FOR FOUR ARCHING CONCRETE BUTTRESSES WHICH ARE BEING CONSTRUCTED BY POURING CONCRETE INTO SPECIALLY DESIGNED STEEL FORMS. THE EMPLOYER IS ALSO MAKING THE COLUMNS REQUIRED FOR THE BUILDING OUT OF CONCRETE WHICH IS POURED INTO WOODEN FORMS. ALTHOUGH THE PARTIES AT THE HEARING ADDUCED EVIDENCE RELATING TO THE FORM WORK BEING DONE IN THE CONSTRUCTION OF THE BUTTRESSES AND COLUMNS, THE RELEASING AND STRIPPING OF THE FORMS BEING USED ON THE BUTTRESSES AND COLUMNS ARE NOT THE SUBJECT OF THE INSTANT COMPLAINT. ACCORDINGLY, THE BOARD DOES NOT PROPOSE TO DEAL WITH THE QUESTION OF THE WORK ASSIGNMENT THAT HAS BEEN MADE RELATING TO THE RELEASING AND STRIPPING OF THE FORM WORK ON THE BUTTRESSES AND COLUMNS.

4. THE FORMS BEING USED IN THE CONSTRUCTION OF THE CONCRETE RETAINING WALLS OF THE BUILDING ARE SEPARATE BUT IDENTICAL TWO FEET BY FOUR FEET STEEL PANELS THAT ARE PLACED AND FASTENED IN ROWS IMMEDIATELY ADJACENT TO ONE ANOTHER MAKING LARGE WHOLE WALL FORMS, A DESIGNATED DISTANCE APART, BETWEEN WHICH THE CONCRETE IS POURED TO MAKE THE RETAINING WALLS. A SCAFFOLDING IS USED BOTH TO ERECT AND SECURE THE PANELS AND TO RELEASE AND STRIP THEM. IN ORDER TO RELEASE THE PANELS THE "PINS" THAT SECURE THEM ARE REMOVED BY A BLOW OF A HAMMER. THE PANELS ARE THEN STRIPPED BY REMOVING THEM BY HAND FROM THE CONCRETE WALL. ONCE THE STEEL PANELS ARE RELEASED AND STRIPPED FROM ONE WALL THEY ARE USED AGAIN AS FORMS TO POUR ANOTHER CONCRETE WALL.

5. THE WORK OF RELEASING AND STRIPPING THE STEEL PANEL FORMS ON THE BUILDING PROJECT IN QUESTION HAS BEEN ASSIGNED BY THE RESPONDENT EMPLOYER TO MEMBERS OF THE RESPONDENT LABOURERS UNION AND BOTH RESPONDENTS SUBMIT THAT THE WORK HAS BEEN PROPERLY ASSIGNED BY THE EMPLOYER. ALL PARTIES ADDUCED EVIDENCE AND MADE REPRESENTATIONS IN SUPPORT OF THEIR RESPECTIVE POSITIONS.

6. BEFORE DEALING WITH THE EVIDENCE IN THE INSTANT CASE, WE WOULD FIRST REFER TO THE CANADA MILLWRIGHTS LIMITED CASE, BOARD FILE NO. 13034-67-JD, IN WHICH DECISION THE BOARD INDICATED SOME OF THE FACTORS THAT MIGHT WELL WARRANT CONSIDERATION IN MAKING A DIRECTION RELATING TO CONFLICTING JURISDICTIONAL CLAIMS TO WORK ASSIGNMENTS IN THE FOLLOWING TERMS:

BRIEFLY THEN, THE JURISDICTION OF THE TRADE UNIONS ASSERTING CONFLICTING CLAIMS AS SET OUT IN THEIR CONSTITUTIONS OR AS INCORPORATED IN AND FORMING PART OF ANY COLLECTIVE AGREEMENTS BETWEEN THEMSELVES AND THE EMPLOYER WHO IS

DOING THE WORK IN DISPUTE, OBVIOUSLY WOULD BE A FACTOR TAKEN INTO ACCOUNT BY THE BOARD. ANY WRITTEN AGREEMENTS OR EVEN INFORMAL UNDERSTANDINGS BETWEEN THE DISPUTING UNIONS AS TO THE RESPECTIVE AREAS OF THEIR WORK JURISDICTION ALSO WOULD BE A RELEVANT CONSIDERATION. AS WELL, RULINGS, AWARDS OR DECISIONS MADE BY AUTHORIZED INDIVIDUALS OR TRIBUNALS RELATING TO THE SAME OR A SIMILAR TYPE OF WORK ASSIGNMENT DISPUTE MIGHT HAVE AN INFLUENCE ON THE BOARD'S DETERMINATION, AS WOULD THE PAST PRACTICE IN ASSIGNING THE WORK IN QUESTION WHETHER IT BE IN AN AREA OR AN INDUSTRY. FINALLY, THE NATURE OF THE WORK, THE SKILLS INVOLVED, SAFETY, EFFICIENCY AND ECONOMY IN THE PERFORMANCE OF THE WORK ARE FACTORS THAT MAY BE OF SIGNIFICANCE.

THE BOARD SPECIFICALLY STATED, HOWEVER, THAT IT WAS NOT SUGGESTING THAT THE FACTORS MENTIONED ABOVE WERE ALL INCLUSIVE OR WERE NECESSARILY OF EQUAL IMPORTANCE.

7. WE WOULD DIRECT OUR ATTENTION NOW TO THE EVIDENCE BEFORE US IN THIS COMPLAINT. THE RESPONDENT EMPLOYER IS A PARTY TO CURRENT COLLECTIVE AGREEMENTS BOTH WITH THE COMPLAINANT CARPENTERS' LOCAL UNION No. 1940 AND THE RESPONDENT LABOURERS' LOCAL UNION 1081. THE AGREEMENT BETWEEN THE EMPLOYER AND LOCAL UNION No. 1081 CONTAINS NO REFERENCE TO THE WORK JURISDICTION OF THE LABOURERS. THE AGREEMENT BETWEEN THE EMPLOYER AND LOCAL UNION No. 1940, HOWEVER, PROVIDES THAT THE EMPLOYER RECOGNIZES THE CARPENTERS JURISDICTION "AS EMBRACING ALL THE WORK WHERE THE SKILL, KNOWLEDGE AND TRAINING OF A CARPENTER IS REQUIRED, OR AS SET OUT BY THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT OF THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES, OR BY AGREEMENT BETWEEN INTERNATIONAL UNIONS".

8. THE CONSTITUTION OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA PROVIDES THAT THE LABOURERS JURISDICTION INCLUDES ALL WORK RECITED IN THE ORIGINAL CHARTER GRANTED FROM THE AMERICAN FEDERATION OF LABOUR AND FROM THE CHARTERS OF OTHER NAMED INTERNATIONAL UNIONS THAT MERGED WITH THE LABOURERS. THE CONSTITUTION ALSO CLAIMS JURISDICTION OVER ALL WORK GRANTED BY DECISIONS OF THE AMERICAN FEDERATION OF LABOUR AND ITS AFFILIATED DEPARTMENTS AND AS OUTLINED IN THE MANUAL OF JURISDICTION DECLARED AND PROMULGATED BY THE GENERAL EXECUTIVE BOARD AND AS HISTORICALLY AND TRADITIONALLY EXERCISED BY THE LABOURERS INTERNATIONAL UNION. THE CONSTITUTION AND LAWS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON THE OTHER HAND, MORE SPECIFICALLY ASSERTS THAT ITS JURISDICTION COVERS MILLING, FASHIONING, JOINING, ASSEMBLING, ERECTING, FASTENING OR DISMANTLING OF ALL MATERIAL OF WOOD, PLASTIC, METAL, FIBER, CORK AND COMPOSITION, AND ALL OTHER SUBSTITUTE MATERIALS.

9. WE WOULD STATE AT THIS POINT THAT THE WORK JURISDICTION ASSERTED BY THE LABOURERS IN THEIR CONSTITUTION AND THAT CLAIMED BY THE CARPENTERS IN THEIR COLLECTIVE AGREEMENT WITH THE RESPONDENT EMPLOYER AND THEIR CONSTITUTION ARE GENERAL AND SWEEPING IN THEIR SCOPE AND, WITH A SINGLE EXCEPTION, NONE OF THE DECISIONS OF THE TRIBUNALS OR BODIES CITED ARE BEFORE THE BOARD. MOREOVER, IN THE CASE OF THE LABOURERS, NONE OF THE CHARTERS REFERRED TO IN THEIR CONSTITUTION ARE ON FILE WITH THE BOARD. IN THESE CIRCUMSTANCES, THE COLLECTIVE AGREEMENTS AND THE CONSTITUTIONS OF THE TWO UNIONS CONCERNED, BY THEMSELVES, ARE OF VERY LIMITED ASSISTANCE TO THE BOARD IN THIS MATTER.

10. THE SINGLE EXCEPTION REFERRED TO IN THE ABOVE PARAGRAPH IS A BRIEF SUMMARY OF A DECISION OF THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES IN WASHINGTON D.C. CONTAINED IN A BULLETIN ISSUED BY THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WHICH HAS A RESUME OF DECISIONS OF THAT TRIBUNAL FOR THE MONTH OF APRIL 1967. THE DISPUTE IN THE CASE THAT WAS DRAWN TO ATTENTION OF THE BOARD WAS BETWEEN THE LABOURERS AND CARPENTERS AND INVOLVED THE RELEASING OF METAL PAN FORMS. THE DECISION OF THE NATIONAL JOINT BOARD WAS THAT THE STRIPPING IN ITS ENTIRETY OF ALL DECK FORMS, "CECO" PANS OR SIMILAR TYPES OF PANS, PANEL FORMS, PLASTIC FIBERGLASS OR PAPER FORMS, PLYWOOD DECKS, BEAM BOTTOMS, BEAMSIDES AND COLUMN FORMS WAS TO BE ASSIGNED TO EQUAL NUMBERS OF CARPENTERS AND LABOURERS. THIS DECISION IS OF LITTLE OR NO GUIDANCE TO THE BOARD, AS THE WORK INVOLVED IN THE PROJECT CONCERNED CLEARLY ENCOMPASSED MORE THAN THE STRIPPING OF WALL FORMS. WE WOULD MENTION THAT THE STRIPPING OF THE STEEL FORMS USED IN THE CONSTRUCTION OF THE CONCRETE BUTTRESSES OF THE PHYSICAL EDUCATION BUILDING AT THE UNIVERSITY OF WATERLOO HAS BEEN ASSIGNED TO THE CARPENTERS AND THE LABOURERS MAKE NO CLAIM TO JURISDICTION FOR THIS PARTICULAR WORK.

11. THE COMPLAINANT ALSO FILED A COPY OF A DIRECTION DATED JULY 9TH, 1965 ISSUED BY THE ONTARIO JURISDICTIONAL DISPUTES COMMISSION. THE DIRECTION CONFIRMED AN EARLIER INTERIM ORDER ASSIGNING THE WORK BEING DONE BY PIGOTT CONSTRUCTION CO. LTD. OF "RELEASING PANEL FORMS TO BE RE-USED AGAIN", AT THE TORONTO DOMINION BANK PROJECT AT TORONTO, TO MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. THE DECISION OF THE COMMISSION TO CONFIRM ITS INTERIM ORDER WAS BASED PARTLY ON THE AGREEMENT OF RECORD BETWEEN THE CARPENTERS AND THE LABOURERS UNIONS AND PARTLY ON THE JOB SITE AGREEMENT BETWEEN THE TWO UNIONS. MORE PARTICULARLY, THE COMMISSION TOOK INTO ACCOUNT AN AGREEMENT OF RECORD DATED OCTOBER 3RD, 1949 BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND THE INTERNATIONAL HOD CARRIERS AND COMMON LABOURERS UNION ENTITLED "MEMORANDUM ON CONCRETE FORMS" WHICH, IN PART, READS THAT "ON STRIPPING OF PANEL FORMS TO BE RE-USED AGAIN, THE RELEASING SHALL BE DONE BY MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA". THE COMMISSION FOUND THAT THE JOB SITE AGREEMENT, MADE BY REPRESENTATIVES OF THE TWO UNIONS AS RECORDED IN A LETTER SENT TO THE COMPANY



WHEREBY THE LABOURERS' REPRESENTATIVE AGREED THAT THE WORK OF RELEASING THE FORMS TO BE RE-USED ON THE PROJECT FELL WITHIN THE JURISDICTION OF THE CARPENTERS UNION AND THAT THE LABOURERS DID NOT CLAIM JURISDICTION FOR THIS WORK, WAS CONCLUSIVE EVIDENCE OF THE CONCURRENCE OF THE LABOURERS THAT THE RELEASING OF PANEL FORMS TO BE RE-USED WAS UNDER THE JURISDICTION OF THE CARPENTERS.

12. THE "MEMORANDUM ON CONCRETE FORMS" DATED OCTOBER 3RD, 1949 WAS FILED AS AN EXHIBIT IN THE INSTANT CASE. A FURTHER DOCUMENT DATED DECEMBER 9TH, 1965, WHICH MAKES REFERENCE TO THE EARLIER AGREEMENT WAS ALSO FILED AS AN EXHIBIT. THIS DOCUMENT WHICH WAS IDENTIFIED BY ADAM FRANK, THE BUSINESS REPRESENTATIVE OF THE LABOURERS' LOCAL UNION No. 1081, READS, IN PART, AS FOLLOWS:

AT A MEETING HELD THIS DAY IN KITCHENER ONTARIO; HAVING IN ATTENDANCE THERETO, THE FOLLOWING, LABOURERS INT. REP. S. JENSEN AND ADAM FRANK BUS. AGT OF LABOURER LOCAL 1081, AND CARPENTERS INT. REP. W. STEFANOVITCH AND J. G. WARD BUS. AGT. OF CARPENTERS LOCAL 1940. THE FOLLOWING UNDERSTANDING WAS REACHED WITH RESPECT TO THE INTERNATIONAL AGREEMENT BETWEEN THE CARPENTERS AND THE LABOURERS, DATED OCT 3/49, AND TITLED "MEMORANDUM ON CONCRETE FORMS.

1. ON FORMS THAT ARE TO BE RE-USED STRIPPING OF SAME IS TO BE PERFORMED BY MEMBERS OF THE CARPENTERS UNION.
2. ALL FORMS SO STRIPPED SHALL BE CLEANED, OILED AND MOVED TO THE NEXT POINT OF ERECTION, IS TO BE PERFORMED BY MEMBERS OF THE LABOURERS UNION.

ITEMS 3 AND 4 OF THE DOCUMENT ARE OMITTED AS THEY HAVE NO RELEVANCE IN THIS PROCEEDING. THE DOCUMENT IS EXECUTED BY ADAM FRANK ON BEHALF OF LABOURERS LOCAL UNION No. 1081 AND BY JAMES G. WARD ON BEHALF OF THE CARPENTERS LOCAL UNION No. 1940, AND THEIR SIGNATURES ARE WITNESSES BY WM. STEFANOVITCH AND S. JENSEN.

13. WE WOULD MENTION THAT AN AGREEMENT SIMILAR IN CONTENT DATED OCTOBER 7TH, 1965 WAS FILED WITH THE BOARD AS AN EXHIBIT. BY THIS AGREEMENT WHICH ALSO CITES THE EARLIER AGREEMENT OF OCTOBER 3RD, 1949, THE LABOURERS LOCAL UNION No. 1089, AND THE CARPENTERS LOCAL UNION No. 1256, BOTH OF WHOSE JURISDICTION COVERS THE SARNIA AREA, AGREED THAT "ON FORMS TO BE RE-USED, THE STRIPPING OF THE SAME IS TO BE PERFORMED BY MEMBERS OF THE CARPENTERS UNION". WE WOULD ADD THAT THIS DOCUMENT WAS NOT IDENTIFIED BY ANYONE HAVING KNOWLEDGE CONCERNING THE AGREEMENT. NONE OF THE PARTIES TO THE PROCEEDING, HOWEVER, CHALLENGED AS A MATTER OF FACT



THAT SUCH AN AGREEMENT WAS MADE BY THE CARPENTERS AND LABOURERS IN THE SARNIA AREA.

14. GEORGE BOEHM, A BUSINESS REPRESENTATIVE FOR LOCAL 1940, TESTIFIED THAT THE CARPENTERS HAD JURISDICTION FOR THE ERECTION AND STRIPPING OF ALL VERTICAL FORM WORK INCLUDING THE STEEL PANEL WALL FORMS WITH WHICH WE ARE HERE CONCERNED. HE FURTHER TESTIFIED THAT TO HIS PERSONAL KNOWLEDGE THE CARPENTERS HAD DONE THE RELEASING AND STRIPPING OF WALL FORMS ON AT LEAST TWO NAMED PROJECTS IN THE KITCHENER-WATERLOO AREA FOR TWO DIFFERENT LOCAL GENERAL CONTRACTORS. THE EVIDENCE OF FRANK BERGER, THE SHOP STEWARD OF LOCAL UNION No. 1940 ON THE JOB SITE, IS THAT IN HIS SIX YEARS' EXPERIENCE AS AN EMPLOYEE OF ELLIS-DON LIMITED, CARPENTERS HAD DONE THE RELEASING AND STRIPPING OF WALL FORMS. ADAM FRANK, THE BUSINESS REPRESENTATIVE OF THE LABOURERS LOCAL UNION No. 1081, ON THE OTHER HAND, IN HIS TESTIMONY NAMED OTHER LOCAL GENERAL CONTRACTORS AND SPECIFIED A COUPLE OF AREA PROJECTS WHERE THE RELEASING AND STRIPPING OF WALL FORMS HAD BEEN DONE BY LABOURERS. ACCORDING TO THE EVIDENCE OF RONALD STARK, THE EMPLOYER'S PROJECT MANAGER, IN HIS TEN YEARS' PREVIOUS EXPERIENCE IN TORONTO AND OTTAWA, LABOURERS WERE USED FOR THE RELEASING AND STRIPPING OF WALL FORMS WHETHER THEY WERE MADE OF WOOD OR METAL.

15. THERE WAS FILED WITH THE BOARD AS AN EXHIBIT A LETTER DATED MARCH 18TH, 1966 ADDRESSED TO W. STEFANOVITCH, THE REGIONAL DIRECTOR OF THE CARPENTERS UNION, WHICH IS PURPORTED TO BE SIGNED BY AN OFFICIAL OF ELLIS-DON LIMITED OUTLINING WHAT PURPORTS TO BE AN AGREEMENT REACHED BETWEEN ELLIS-DON LIMITED AND LOCAL UNION No. 1940 OF THE CARPENTERS. PART OF THE AGREEMENT AS CONTAINED IN THE LETTER IS THAT THE MEMORANDUM OF DECEMBER 9TH, 1965 BETWEEN THE LABOURERS LOCAL UNION No. 1081 AND THE CARPENTERS LOCAL UNION No. 1940 (WHICH IS QUOTED IN PART IN PARAGRAPH 12) "IS BEING ADHERED TO AND WILL CONTINUE TO BE ADHERED TO BY ELLIS-DON LIMITED IN THE AREA OF JURISDICTION OF LOCAL UNION No. 1940". ON THE OTHER HAND, THERE WAS ALSO FILED WITH THE BOARD A LETTER DATED JUNE 21ST, 1967 ADDRESSED TO SIROTEK CONTRACTORS LIMITED WHICH IS PURPORTEDLY SIGNED BY JOSEPH P. DOLAN, THE SECRETARY-MANAGER OF THE KITCHENER-WATERLOO CONSTRUCTION ASSOCIATION, IN WHICH DOLAN STATES THAT HE HAD CHECKED WITH THE MAJOR RESIDENT CONTRACTOR MEMBERS OF THE ASSOCIATION WHO ARE PARTIES TO COLLECTIVE AGREEMENTS WITH THE BUILDING TRADE UNIONS AND WAS INFORMED BY THEM THAT "IT HAS BEEN AND CONTINUES TO BE THE PRACTICE WITHIN THIS AREA FOR CONTRACTORS TO ASSIGN STRIPPING OF CONCRETE FORMS TO LABOURERS ON THEIR WORK FORCE". THIS STATEMENT IS QUALIFIED BY THE PROVISIO THAT IN CIRCUMSTANCES WHERE IT WAS DESIRED TO PRESERVE SPECIAL OR DELICATE FORM FOR RE-USE WITHOUT DISMANTLING IT, CARPENTERS WERE FREQUENTLY USED TO DISENGAGE OR RELEASE THE FORM BEFORE IT WAS MOVED TO ITS NEXT LOCATION BY LABOURERS. NEITHER LETTER WAS PROPERLY IDENTIFIED AND THE PARTIES OPPOSED IN INTEREST HAD NO OPPORTUNITY TO CROSS-EXAMINE ON THE CONTENTS OF THE LETTERS. THEIR EVIDENTIARY VALUE, ACCORDINGLY, AT BEST, IS NEGLIGIBLE.

16. THE WITNESSES CALLED BY THE PARTIES WHO GAVE EVIDENCE AS TO THE PAST PRACTICE IN THE INDUSTRY AND IN THE KITCHENER-WATERLOO AREA AS TO THE ASSIGNMENT OF WORK FOR THE RELEASING AND STRIPPING OF WALL FORMS WAS LIMITED TO THEIR INDIVIDUAL EXPERIENCES. NO WITNESSES WERE CALLED WHO COULD TRULY CLAIM TO HAVE COMPREHENSIVE KNOWLEDGE ON THIS SUBJECT. IN THE CIRCUMSTANCES THE VIVA VOCE EVIDENCE AS TO PAST PRACTICE CAN ONLY BE DESCRIBED AS FRAGMENTARY. MOREOVER, THE WITNESSES CALLED BY THE PARTIES WERE PERSONS WHO BY THE VERY NATURE OF THEIR EMPLOYMENT CLEARLY IDENTIFIED THEMSELVES WITH THE INTERESTS OF THE PARTY WHO HAD CALLED THEM AS A WITNESS. THEIR TESTIMONY, IN OUR OPINION, REFLECTED A SUBJECTIVITY, WHICH IMPAIRS ITS VALUE. THE EVIDENCE, SUCH AS IT IS, HOWEVER, INDICATES THAT THERE IS NO CLEAR PRACTICE IN THE KITCHENER-WATERLOO AREA AS BETWEEN LABOURERS AND CARPENTERS AND THAT BOTH TRADES HAVE BEEN DOING THE TYPE OF WORK IN DISPUTE.

17. THE VIVA VOCE EVIDENCE ADDUCED AT THE HEARING, HOWEVER, CLEARLY SHOWS THAT THE DEGREE OF SKILL REQUIRED FOR THE RELEASING AND STRIPPING OF WALL FORMS, AND IN PARTICULAR STEEL PANEL FORMS, IS MINIMAL AND THE JOB CAN BE PERFORMED WITH EQUAL PROFICIENCY BY EITHER CARPENTERS OR LABOURERS. FURTHER THERE IS NO DIFFERENTIATION TO BE MADE RELATING TO SAFETY FACTORS, WHETHER THE WORK IS PERFORMED BY LABOURERS OR CARPENTERS. FINALLY IS MORE ECONOMICAL FOR THE COMPANY TO EMPLOY LABOURERS RATHER THAN CARPENTERS TO DO THE WORK.

18. THE EVIDENCE STILL TO BE EVALUATED IS THE AGREEMENT EXECUTED BY AUTHORIZED REPRESENTATIVES OF THE LABOURERS LOCAL UNION No. 1081 AND THE CARPENTERS LOCAL UNION No. 1940 DATED DECEMBER 9TH, 1965 WHICH IS BASED ON AN EARLIER AGREEMENT DATED OCTOBER 3RD, 1949, ENTERED INTO BY THE TWO INTERNATIONAL UNIONS. WE NOTE THAT THE LATTER AGREEMENT PROVIDES THAT "ON THE STRIPPING OF PANEL FORMS TO BE RE-USED AGAIN THE RELEASING SHALL BE DONE BY MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA", WHEREAS THE FORMER MENTIONED AGREEMENT PROVIDES THAT "ON FORMS THAT ARE TO BE RE-USED, STRIPPING OF SAME IS TO BE PERFORMED BY MEMBERS OF THE CARPENTERS UNION". IN SHORT, THE REFERENCE TO "RELEASING" IN THE ONE DOCUMENT AND "STRIPPING" IN THE OTHER, REVEALS AN APPARENT DISCREPANCY, BETWEEN THE TWO AGREEMENTS. WE WOULD ADD HERE THAT THE JULY 9TH, 1965 DECISION OF THE ONTARIO JURISDICTIONAL DISPUTES COMMISSION IS CONFINED TO THE "RELEASING OF PANEL FORMS TO BE RE-USED AGAIN". THE APRIL 1967 DECISION OF THE NATIONAL JOINT BOARD, ON THE OTHER HAND, DEALS ONLY WITH THE STRIPPING OF FORMS.

19. ADAM FRANK, THE BUSINESS REPRESENTATIVE OF THE LABOURERS LOCAL UNION No. 1081, WHO IS THE ONLY SIGNATORY TO THE DECEMBER 9TH, 1965 AGREEMENT WHO GAVE EVIDENCE AT THE HEARING, TESTIFIED THAT HIS UNDERSTANDING OF ITEM 1, OF THE AGREEMENT (QUOTED IN PARAGRAPH 12) WAS THAT IT ONLY REFERRED TO FORMS COMPOSED OF NUMBER OF PIECES THAT WERE STRIPPED WITHOUT BEING DISMANTLED AND NOT TO THE STRIPPING OF SINGLE WALL PANELS. J. G. WARD, THE BUSINESS AGENT OF CARPENTERS LOCAL UNION No. 1940, WHO WAS ALSO A SIGNATORY TO THE DECEMBER 9TH, 1965 AGREEMENT, ALTHOUGH IN ATTENDANCE AT THE BOARD HEARING, DID NOT TESTIFY AS TO HIS UNDERSTANDING OF THE AGREEMENT. THE COMPLAINT, ITSELF, HOWEVER, WOULD SEEM TO INDICATE THAT THE LOCAL UNION No. 1940 INTERPRETS THE AGREEMENT AS GIVING JURISDICTION TO THE CARPENTERS FOR BOTH THE RELEASING AND STRIPPING OF WALL PANELS TO BE RE-USED.

20. IN LIGHT OF THE DISCREPANCIES IN THE WORDING OF THE 1949 AND 1965 AGREEMENTS THEMSELVES, THE CONFLICTING INTERPRETATIONS THAT HAVE BEEN PLACED UPON THE 1965 AGREEMENT BY THE TWO UNIONS CONCERNED, AND THE EVIDENCE OF THE VARIATION IN THE ACTUAL PRACTICE THAT HAS BEEN FOLLOWING IN THE AREA SINCE THE AGREEMENT WAS EXECUTED, WE FIND THAT THE DECEMBER 9TH, 1965 AGREEMENT IS EQUIVOCAL AS TO ITS MEANING. WE, ACCORDINGLY ARE NOT PREPARED TO RELY UPON IT AS A BASIS UPON WHICH TO DETERMINE THE JURISDICTIONAL DISPUTE BEFORE US.

21. IN SUMMARY THEN, ON THE BASIS OF ALL THE EVIDENCE BEFORE THE BOARD, THE COMPLAINANT HAS FAILED TO SATISFY US THAT IT IS ENTITLED TO THE DIRECTION WHICH IT IS SEEKING IN THE INSTANT COMPLAINT.

22. BEFORE MAKING ANY DIRECTION IN THIS MATTER WE FEEL CALLED UPON TO COMMENT ON THE EVIDENCE IN THIS INSTANT CASE. AS WE HAVE ALREADY INDICATED THE EVIDENCE, PARTICULARLY AS IT RELATES TO THE IMPORTANT AREA OF PAST PRACTICE, IS FRAGMENTARY. MOREOVER, THE MANNER IN WHICH MUCH OF THE EVIDENCE WAS PRESENTED WAS UNSATISFACTORY AND HAD THE EFFECT OF DETERRING THE BOARD FROM PLACING SUBSTANTIAL RELIANCE UPON IT. THE BOARD, OF COURSE, IS MOST ANXIOUS THAT ITS DIRECTIONS FAIRLY SETTLE ANY WORK ASSIGNMENT DISPUTES THAT COME BEFORE IT. IN ORDER TO ENABLE THE BOARD TO DO SO, HOWEVER, IT IS INCUMBENT UPON THE PARTIES CONCERNED TO PLACE BEFORE THE BOARD BOTH COMPLETE AND THE BEST EVIDENCE ON ALL RELEVANT ISSUES.

23. IN ALL THE CIRCUMSTANCES OF THIS COMPLAINT, THE BOARD DIRECTS THAT THE RESPONDENT SIROTEK CONTRACTORS LIMITED CONTINUE TO ASSIGN THE WORK OF RELEASING AND STRIPPING ALL RE-USABLE STEEL PANEL WALL FORMS BEING USED BY THE RESPONDENT COMPANY IN THE ERECTION OF THE PHYSICAL EDUCATION BUILDING AT THE UNIVERSITY OF WATERLOO TO MEMBERS OF THE RESPONDENT LOCAL UNION No. 1081, LABOURERS INTERNATIONAL UNION OF NORTH AMERICA.

DECISION OF BOARD MEMBER EDMUND BOYER:

August 2, 1967.

I DISSENT.

I INTERPRET THE AGREEMENT BETWEEN THE RESPONDENT UNIONS DATED DECEMBER 9TH, 1965, WHEN TAKEN TOGETHER WITH THE "MEMORANDUM ON CONCRETE FORMS" DATED OCTOBER 3RD, 1949 WHICH IS CITED IN THE AGREEMENT, AS MEANING THAT THE TWO LOCAL UNIONS AGREED THAT BOTH THE WORK OF RELEASING AND STRIPPING OF PANEL FORMS TO BE RE-USED CAME WITHIN THE JURISDICTION OF THE CARPENTERS.

ON THE BASIS SOLELY OF THE EVIDENCE BEFORE THE BOARD, WHICH I AGREE WITH MY COLLEAGUES LEAVES SOMETHING TO BE DESIRED, AND FOR PURPOSES OF THIS COMPLAINT ONLY, I WOULD HAVE DIRECTED THAT THE RESPONDENT COMPANY ASSIGN THE WORK OF RELEASING THE STRIPPING ALL RE-USABLE STEEL PANEL WALL FORMS BEING USED BY THE COMPANY IN THE ERECTION OF THE PHYSICAL EDUCATION BUILDING AT THE UNIVERSITY OF WATERLOO TO A COMPOSITE CREW OF EQUAL NUMBERS OF MEMBERS OF LABOURERS LOCAL UNION No. 1081 AND CARPENTERS LOCAL UNION No. 1940.

13484(A)-67-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED (COMPLAINANT)  
V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486,  
AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493  
(RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: W. S. COOK, J. RUDACK AND J. C. THOMSON FOR THE  
COMPLAINANT, P. E. GUERTIN AND R. REID FOR UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, J. B. WATERMAN, W. MASSEY,  
E. POITRAS AND G. FLOOK FOR LABOURERS INTERNATIONAL UNION OF NORTH AMERICA,  
LOCAL 493.

DECISION OF THE BOARD: August 11, 1967.

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3. THE COMPLAINANT IN ITS COMPLAINT HAS REQUESTED THAT THE BOARD  
MAKE AN INTERIM ORDER WITH RESPECT TO THE ASSIGNMENT OF WORK WHICH IS IN  
DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

4. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE  
BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING  
INTERIM ORDER:

THE COMPLAINANT SHALL ASSIGN THE WORK OF  
STRIPPING AND RELEASING WALL FORMS, TO BE  
USED AGAIN, WHICH ARE BEING USED BY THE  
COMPLAINANT ON THE FRASER-BRACE ENGINEERING  
COMPANY, LIMITED CONSTRUCTION PROJECT FOR  
INTERNATIONAL NICKEL COMPANY OF CANADA,  
LIMITED, AT SUDBURY, TO MEMBERS OF THE  
RESPONDENT UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA, LOCAL 2486.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH  
AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME  
AS THE BOARD ISSUES A FURTHER DIRECTION.

INDEXED ENDORSEMENT - REQUEST FOR REVIEW

13175-67-R: HERBERT CADIOU, GARY PATTERSON, JAMES BEAN, ROSS CUMMING  
AND LORNE ROBINSON (APPLICANTS) V. GALT TYPOGRAPHICAL UNION No. 411  
(RESPONDENT)

RE: THE EVENING REPORTER, GALT

DECISION OF THE BOARD: August 14, 1967.

1. ON JUNE 15TH, 1967, THE BOARD ISSUED AN ENDORSEMENT DISMISSING



THIS APPLICATION PURSUANT TO SECTION 46 OF THE BOARD'S RULES OF PROCEDURE. ON JUNE 28TH, 1967, THE BOARD RECEIVED A COMMUNICATION FROM ONE OF THE APPLICANTS WITH RESPECT TO THE BOARD'S DECISION. THIS COMMUNICATION MAY BE CONSIDERED AS A REQUEST FOR REVIEW PURSUANT TO SUBSECTION (2) OF SECTION 46.

2. THE MATERIALS SET OUT IN THE REQUEST FOR REVIEW DO NOT GO TO THE QUESTIONS WHICH THE BOARD MUST CONSIDER IN AN APPLICATION FOR TERMINATION PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT, NOR IS THERE ANY CHALLENGE TO THE PREMISES ON WHICH THE BOARD PROCEEDED IN THE ENDORSEMENT OF JUNE 15TH. ACCORDINGLY NO GROUND EXISTS FOR CHANGING THE DECISION REACHED BY THE BOARD IN THIS MATTER.

3. PURSUANT TO SECTION 46 (4) OF THE BOARD'S RULES OF PROCEDURE THE BOARD CONFIRMS ITS DECISION OF JUNE 15TH, 1967, DISMISSING THE APPLICATION.

#### INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13310-67-R: BYRON FROUDE AND R. (DICK) HAYWARD (APPLICANTS) V. PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (RESPONDENT) V. E. S. AND A. ROBINSON (CANADA) LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD: AUGUST 3, 1967.

1. THE APPLICANTS, BY LETTER DATED JULY 19TH, 1967, HAVE REQUESTED THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER DATED JULY 19TH, 1967.

2. HAVING REGARD TO THE REPRESENTATIONS OF THE APPLICANTS AS CONTAINED IN THEIR LETTER OF JULY 19TH, 1967, THE REPRESENTATIONS OF THE RESPONDENT AS CONTAINED IN ITS LETTER DATED JULY 26TH, 1967 AND THE REPRESENTATIONS OF THE INTERVENER AS CONTAINED IN ITS LETTER DATED JULY 25TH, 1967, THE BOARD FINDS THAT ALL THE MATTERS RAISED BY THE APPLICANTS IN THEIR LETTER OF JULY 19TH WERE DEALT WITH BY THE BOARD AT THE HEARING IN THIS MATTER AND WERE TAKEN INTO CONSIDERATION BY THE BOARD PRIOR TO ITS DECISION OF JULY 19TH, 1967. AS STATED AT THE HEARING, THE STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OTHER TEMPORARY HELP WHO WERE INCLUDED ON THE LIST OF EMPLOYEES FILED BY THE INTERVENER, ARE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT UNION SINCE THEY WERE NOT SPECIFICALLY EXCLUDED THEREFROM. IN ADDITION, WHILE THE APPLICANTS FILED PETITIONS CONTAINING 277 SIGNATURES, SINCE THERE WERE REPETITIONS IN SIGNATURES, ONLY 260 INDIVIDUALS ACTUALLY SIGNED THE PETITIONS AND IT WAS THIS LATTER NUMBER OF SIGNATURES WHICH WAS TAKEN INTO CONSIDERATION BY THE BOARD IN ITS DECISION OF JULY 19TH, 1967.

3. FOR THE FOREGOING REASONS AND FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISION OF JULY 19TH, 1967 AND BECAUSE THE APPLICANTS HAVE NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT

THE HEARING IN THIS MATTER, THE BOARD DOES NOT CONSIDER THAT IT WOULD BE ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF JULY 19TH, 1967 IN THIS MATTER.

4. THE APPLICANTS' REQUEST IS THEREFORE DENIED.

13397-67-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT)  
V. J. D. COAD CONSTRUCTION CO LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: AUGUST 23, 1967.

1. THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED JULY 27, 1967 ON THE GROUND THAT IT FAILED TO CERTIFY THE RESPONDENT FOR BRICKLAYERS AND LABOURERS IN THE TRENTON AREA.

2. THE LIST FILED BY THE RESPONDENT INDICATES THAT ON THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT EMPLOYED ONLY CARPENTERS AND CARPENTERS APPRENTICES IN THE TRENTON AREA, I.E. BOARD AREA #12. AS THE BOARD STATED IN PARAGRAPH 6 OF ITS DECISION DATED JULY 27, 1967.

"FURTHERMORE, THE BOARD'S GENERAL POLICY IS NOW TO AVOID DESCRIBING A BARGAINING UNIT IN TERMS OF "ALL EMPLOYEES" BUT RATHER TO RESTRICT THE UNIT TO TRADES ON THE JOB AT THE DATE OF THE MAKING OF THE APPLICATION. REFERENCE IS MADE TO THE WINTER & SON CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1967, P. 889".

IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO MODIFY ITS DECISION OF JULY 27, 1967, WHICH IS HEREBY CONFIRMED.

STATISTICAL TABLES FOR AUGUST 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	AUGUST 1967	1ST 5 MONTHS OF FISCAL YEAR 1967-68	1966-67
I. CERTIFICATION	93	428	442
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	37	17
III. DECLARATION OF SUCCESSOR STATUS	1	5	4
IV. DECLARATION THAT STRIKE UNLAWFUL	3	26	9
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	11	-
VI. CONSENT TO PROSECUTE	4	63	44
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	21	69	53
VIII. MISCELLANEOUS	<u>4</u>	<u>22</u>	<u>25</u>
TOTAL	<u>133</u>	<u>661</u>	<u>594</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	AUGUST 1967	1ST 5 MONTHS OF FISCAL YEAR 1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	74	418	358

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		AUGUST	1ST 5 MTHS OF	FISCAL YEAR
		1967	1967-68	1966-67
I.	CERTIFICATION	77	417	415
II.	DECLARATION TERMINATING BARGAINING RIGHTS	3	29	19
III.	DECLARATION OF SUCCESSOR STATUS	1	5	2
IV.	DECLARATION THAT STRIKE UNLAWFUL	8	25	6
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	11	-
VI.	CONSENT TO PROSECUTE	11	46	34
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	15	74	57
VIII.	MISCELLANEOUS	7	36	19
TOTAL		<u>122</u>	<u>643</u>	<u>552</u>



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>AUGUST</u> <u>1967</u>	<u>1ST 5 MONTHS</u> <u>1967-68</u>	<u>FISCAL YR.</u> <u>1966-67</u>	<u>AUGUST</u> <u>1967</u>	<u>1ST 5 MONTHS</u> <u>1967-68</u>	<u>FISCAL YR.</u> <u>1966-67</u>
I. <u>CERTIFICATION</u>						
GRANTED	54	307	298	1144	8438	6987
DISMISSED	15	80	70	338	4017	6755
WITHDRAWN	8	30	47	141	551	680
TOTAL	<u>77</u>	<u>417</u>	<u>415</u>	<u>1623</u>	<u>13006</u>	<u>14422</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	2	15	12	9	187	460
DISMISSED	-	13	7	-	640	187
WITHDRAWN	<u>1</u>	<u>1</u>	<u>-</u>	<u>1</u>	<u>1</u>	<u>-</u>
TOTAL	<u>3</u>	<u>29</u>	<u>19</u>	<u>10</u>	<u>828</u>	<u>647</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>AUGUST</u>	<u>1ST 5 MTHS OF FISCAL YR.</u>	
		<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	1	2
	DISMISSED	-	2	-
	WITHDRAWN	<u>8</u>	<u>22</u>	<u>4</u>
	TOTAL	<u>8</u>	<u>25</u>	<u>6</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	-
	WITHDRAWN	<u>-</u>	<u>10</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>11</u>	<u>-</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	2	5	4
	DISMISSED	-	4	2
	WITHDRAWN	<u>9</u>	<u>37</u>	<u>28</u>
	TOTAL	<u>11</u>	<u>46</u>	<u>34</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	AUGUST 1967	1ST 5 MTHS. 1967-68	FISCAL YR. 1966-67
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	4	8	8
POST-HEARING VOTE	4	23	16
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	5	3
POST-HEARING VOTE	5	14	26
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>13</u>	<u>50</u>	<u>53</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	AUGUST 1967	1ST 5 MTHS. 1967-68	FISCAL YR. 1966-67
*RESPONDENT UNION SUCCESSFUL	-	1	4
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>8</u>	<u>9</u>
TOTAL	<u>1</u>	<u>9</u>	<u>13</u>

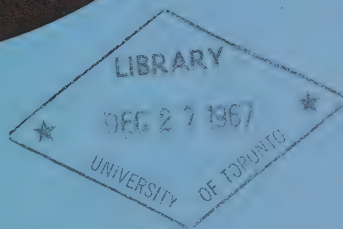
\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

SEPTEMBER 1967



ONTARIO

# *Monthly Report*



ONTARIO LABOUR RELATIONS BOARD





# ERRATUM

THE PAGE NUMBER 533 WAS INADVERTENTLY  
NOT USED IN THIS REPORT.



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING SEPTEMBER 1965

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

NO VOTE CONDUCTED

11476-65-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE UNIVERSITY OF GUELPH (RESPONDENT) V. CANADIAN GUARDS ASSOCIATION (INTERVENER) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED OR NORMALLY PERFORMING A MAJOR PART OF THEIR WORK AT ITS CAMPUS AT GUELPH ENGAGED IN CLERICAL OR STENOGRAPHIC PURSUITS, OR PERFORMING DUTIES AS TECHNICIANS OR THEIR ASSISTANTS, OR PERFORMING AGRICULTURAL DUTIES IN THE ONTARIO VETERINARY COLLEGE OR IN THE HORTICULTURE DEPARTMENT OF THE ONTARIO AGRICULTURAL COLLEGE, SAVE AND EXCEPT:

- (1) MEMBERS OF THE UNIVERSITY FACULTY;
- (2) ALL PERSONS EMPLOYED IN THE DIRECTORATE OF PERSONNEL;
- (3) SECRETARIES TO ACADEMIC AND ADMINISTRATIVE DEPARTMENT HEADS AND TO PERSONS ABOVE THOSE RANKS;
- (4) ALL PERSONS EMPLOYED IN THE PAYROLL SECTION OF THE CHIEF ACCOUNTANT'S DEPARTMENT;
- (5) ALL PERSONS EMPLOYED IN THE BURSAR'S OFFICE;
- (6) ALL PERSONS EMPLOYED IN ADMINISTRATIVE ELECTRONIC DATA PROCESSING AND ITS ANCILLARY SERVICES;
- (7) ALL PERSONS EMPLOYED IN A PROFESSIONAL CAPACITY IN THE FIELDS OF ENGINEERING, ACCOUNTING, PURCHASING, LIBRARY SCIENCE, ADMINISTRATION, MEDICINE, NURSING AND STUDENT COUNSELLING;
- (8) ADMINISTRATIVE AND EXECUTIVE ASSISTANTS TO DEPARTMENT HEADS OR PERSONS ABOVE THAT LEVEL;
- (9) ENGINEERING ASSISTANTS, FIELD CO-ORDINATORS, AND PERSONS ABOVE THOSE LEVELS IN THE DIRECTORATE OF PHYSICAL RESOURCES;

- (10) ALL PERSONS EMPLOYED IN THE OFFICES OF THE PRESIDENT, VICE-PRESIDENT ACADEMIC AND VICE-PRESIDENT ADMINISTRATION;
- (11) ALL PERSONS PAID FROM TRUST FUNDS AND GRANTS;
- (12) ALL PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK;
- (13) STUDENTS ENROLLED IN THE UNIVERSITY;
- (14) EMPLOYEES OF THE UNIVERSITY OF GUELPH DEVELOPMENT FUND;
- (15) THE SUPERVISING AND CONFIDENTIAL CLERK IN THE OFFICE OF THE DEAN OF MACDONALD INSTITUTE;
- (16) THE CONFIDENTIAL CLERK IN THE DEPARTMENT OF ANIMAL SCIENCE AND IN ANY OTHER DEPARTMENT WHERE THE PERSONNEL STRENGTH IS GREATER THAN 50 AND SUCH APPOINTMENT IS DEEMED NECESSARY BY THE UNIVERSITY;
- (17) SPORTS COACHES IN THE SCHOOL OF PHYSICAL EDUCATION;
- (18) PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED DECEMBER 15TH, 1965, ISSUED TO THE CANADIAN GUARDS ASSOCIATION;
- (19) PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED DECEMBER 15TH, 1965, ISSUED TO THE CANADIAN UNION OF OPERATING ENGINEERS;
- (20) MACHINE ROOM SUPERVISOR IN THE DEPARTMENT OF ANIMAL SCIENCE;
- (21) THE SWITCHBOARD SUPERVISOR;
- (22) THE SUPERVISING CLERK IN THE REGISTRAR'S OFFICE;
- (23) THE AGRICULTURAL SUPERVISOR IN THE DEPARTMENT OF HORTICULTURE;
- (24) THE TWO SUPERVISING TECHNICIANS IN THE DEPARTMENT OF HORTICULTURE;
- (25) THE SUPERVISING TECHNICIAN IN THE DEPARTMENT OF ANIMAL SCIENCE (BREEDERS' SERVICES);



- (26) THE AGRICULTURAL SUPERVISORS [AND THE SUPERVISING TECHNICIANS] IN THE DEPARTMENT OF PHYSIOLOGICAL SCIENCES;
- (27) THE AGRICULTURAL SUPERVISOR, (LARGE ANIMAL CLINIC) DEPARTMENT OF CLINICAL STUDIES, ONTARIO VETERINARY COLLEGE;
- (28) THE SUPERVISING AGRICULTURAL WORKER, DEPARTMENT OF AVIAN PATHOLOGY, ONTARIO VETERINARY COLLEGE;
- (29) THE SUPERVISING TECHNICIAN, (SMALL ANIMAL CLINIC) DEPARTMENT OF CLINICAL STUDIES, O.V.C.;
- (30) THE SUPERVISING AGRICULTURAL WORKER, DEPARTMENT OF NUTRITION;
- (31) THE SUPERVISING TECHNICIAN, DEPARTMENT OF VETERINARY BACTERIOLOGY;
- (32) THE SUPERVISING TECHNICIAN, DEPARTMENT OF MICROBIOLOGY." (197 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 520).

12968-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. BENDIX ECLIPSE OF CANADA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES EMPLOYED BY THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PRIVATE SECRETARY TO THE GENERAL MANAGER, PRIVATE SECRETARY TO THE GENERAL SALES MANAGER, SALES REPRESENTATIVES, STUDENTS EMPLOYED ON A UNIVERSITY CO-OPERATIVE BASIS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (60 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 524).

13096-67-R: NURSES' ASSOCIATION HAMILTON HEALTH ASSOCIATION (APPLICANT) V. HAMILTON HEALTH ASSOCIATION (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT HAMILTON ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (150 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND ALL THE REPRESENTATIONS OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 532).

13141-67-R: NURSES' ASSOCIATION QUEENSWAY GENERAL HOSPITAL (APPLICANT)  
V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING  
ENGINEERS (INTERVENER).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN  
THE TOWNSHIP OF ETOBICOKE ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT  
HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REGULARLY  
EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (166 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 534 ).

13142-67-R: NURSES' ASSOCIATION QUEENSWAY GENERAL HOSPITAL (APPLICANT)  
V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING  
ENGINEERS (INTERVENER).

UNIT: "ALL REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED BY THE  
RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK IN THE TOWNSHIP OF  
ETOBICOKE AND ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD  
NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REFERRED  
TO IN BOARD CERTIFICATE DATED SEPTEMBER 6TH, 1967, BOARD FILE NO.  
13141-67-R." (95 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 535).

13197-67-R: NURSES' ASSOCIATION MCKELLAR GENERAL HOSPITAL (APPLICANT) V.  
MCKELLAR GENERAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT#1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT  
FORT WILLIAM ENGAGED IN DIRECT NURSING CARE OF PATIENTS AND IN TEACHING  
IN ITS SCHOOL OF NURSING, SAVE AND EXCEPT THE DIRECTOR OF HEALTH SERVICES,  
HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, CLINICAL CO-ORDINATOR  
AND PERSONS ABOVE THE RANK OF CLINICAL CO-ORDINATOR IN THE SCHOOL OF  
NURSING, AND THOSE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS  
PER WEEK." (109 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT  
FORT WILLIAM ENGAGED IN DIRECT NURSING CARE OF PATIENTS AND IN TEACHING IN  
ITS SCHOOL OF NURSING REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR  
HOURS PER WEEK, SAVE AND EXCEPT THE DIRECTOR OF HEALTH SERVICES, HEAD  
NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, CLINICAL CO-ORDINATOR AND  
PERSONS ABOVE THE RANK OF CLINICAL CO-ORDINATOR IN THE SCHOOL OF NURSING,"  
(45 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 536).

13341-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. CARL J. LEHMAN & SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

13390-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JOHNS-MANVILLE MINING & TRADING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE DEVELOPMENT STAGE OF ITS MINING OPERATIONS IN REEVES TOWNSHIP IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT BOSS AND FOREMAN, OFFICE AND SALES STAFF AND DEPARTMENT CLERKS, PERSONS EMPLOYED IN THE ENGINEERING AND GEOLOGY DEPARTMENTS, SECURITY GUARDS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (119 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 543).

13403-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. UNIVERSAL COOLER, A DIVISION OF SNO-BOY COOLERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 546).

13449-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. DOMINION SASH LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STREETSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (70 EMPLOYEES IN THE UNIT).

13529-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. FIRESTONE TEXTILES LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM IN ITS PLANT NUMBER 3 AT WOODSTOCK, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT).

13534-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. PUBLIC UTILITIES COMMISSION OF THE CITY OF BELLEVILLE (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE BELLEVILLE UTILITIES COMMISSION AT BELLEVILLE, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

13535-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) v. ALMA EQUIPMENT CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF ALMA EQUIPMENT CO. LIMITED IN THE MUNICIPALITY OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

13540-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. GALT DRY CLEANING SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (25 EMPLOYEES IN THE UNIT).

13547-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. HANSON MACHINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN WOODSTOCK, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

13552-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. F.C.S. CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13555-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FENWICK AUTOMOTIVE PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (77 EMPLOYEES IN THE UNIT).

13556-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BARBER BARREL AND DRUM COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT LOCATED AT 30 NASHVILLE AVENUE IN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).



13557-67-R: GENERAL TRUCK DRIVER'S UNION LOCAL 879 (APPLICANT) v. CITY PARKING CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF HAMILTON, SAVE AND EXCEPT FIELD SUPERVISORS, RESIDENT MANAGERS, PERSONS ABOVE THE RANK OF FIELD SUPERVISOR OR RESIDENT MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(11 EMPLOYEES IN THE UNIT).

13558-67-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1891 (APPLICANT) v. ROXTON PAINTERS (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(10 EMPLOYEES IN THE UNIT).

13559-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC, AFL-CIO (APPLICANT) v. ROBIN TEXTILES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT LOCATED AT ELMIRA, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(41 EMPLOYEES IN THE UNIT).

13562-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. NADECO LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(3 EMPLOYEES IN THE UNIT).

13564-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. BABCOCK & WILCOX CANADA LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13566-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1,  
N.C.C.L. (APPLICANT) V. LONGPRÉ LATHING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS LATHING OPERATIONS  
IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP),  
RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS  
ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

ALTHOUGH THE APPLICANT HAS REQUESTED AN "ALL EMPLOYEE" UNIT, FOR  
THE REASONS SET OUT IN WINTER & SONS CASE, O.L.R.B. MONTHLY REPORT,  
FEBRUARY, 1967, P. 889, THE BOARD PROPOSES TO RESTRICT THE UNIT IN THE  
SAME WAY AS IT DID IN THE WINTER & SONS CASE.

13568-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH  
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS (APPLICANT) V. ANTHONY DEROSE LIMITED (RESPONDENT) V. INTERNATIONAL  
UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER).

UNIT: "ALL DUMP TRUCK DRIVERS AND FLOAT DRIVERS EMPLOYED BY THE RESPONDENT  
AT THE TOWNSHIP OF THOROLD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK  
OF FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE  
AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (5 EMPLOYEES IN THE  
UNIT).

(HAVING REGARD FOR THE AGREEMENT OF THE PARTIES).

13569-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC  
(APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CASH AND CARRY OPERATIONS  
AT SAULT STE. MARIE, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF  
MANAGER, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13570-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORTHERN  
ONTARIO NATURAL GAS DIVISION OF NORTHERN AND CENTRAL GAS COMPANY LIMITED  
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY AT ORILLIA, SAVE AND  
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(2 EMPLOYEES IN THE UNIT).

13571-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC  
(APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT MORRISBURG,  
SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER,  
OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT  
BETWEEN THE APPLICANT AND THE RESPONDENT." (7 EMPLOYEES IN THE UNIT).

13572-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. WM. R. BARNES COMPANY, LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERDOWN AND MILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 566).

13574-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. READMAN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13575-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. SCARBOROUGH CENTENARY HOSPITAL ASSOCIATION (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

13585-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANMART SHOE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DISTRIBUTION CENTRES IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALESMEN AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

13590-67-R: LE SYNDICAT DES EMPLOYES DE SERVICES PUBLICS D'ORLEANS (CSN-CNTU) (RESPONDENT) V. RESIDENCE ST-LOUIS (RESPONDENT).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT ITS HOME FOR THE AGED IN ORLEANS, SAVE AND EXCEPT REGISTERED AND GRADUATE NURSES, FOREMEN, SUPER-INTENDENTS, AND PERSONS ABOVE THE RANK OF FOREMAN OR SUPERINTENDENT." (44 EMPLOYEES IN THE UNIT).

13598-67-R: THE NURSES' ASSOCIATION OF THE KINGSTON DEPARTMENT OF HEALTH (APPLICANT) V. THE CORPORATION OF THE CITY OF KINGSTON (RESPONDENT).



UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN ITS DEPARTMENT OF HEALTH, SAVE AND EXCEPT SUPERVISOR OF NURSES AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSES." (8 EMPLOYEES IN THE UNIT).

13603-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. THOMAS FULLER CONSTRUCTION Co., (1958) LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13606-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CUTTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (43 EMPLOYEES IN THE UNIT).

13610-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. DELUCA & MASCARIN CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

13615-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. TORONTO MEDICAL ARTS BUILDING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT 170 ST. GEORGE STREET, TORONTO, SAVE AND EXCEPT BUILDING SUPERINTENDENT AND PERSONS ABOVE THE RANK OF BUILDING SUPERINTENDENT." (3 EMPLOYEES IN THE UNIT).

13616-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE BOILER ROOM IN THE RESPONDENT'S BUILDING, 56 SPARKS STREET AT OTTAWA." (2 EMPLOYEES IN THE UNIT).



13620-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. INSPIRATION LIMITED, BUILDING DIVISION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN ITS BUILDING DIVISION, WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

13622-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NORRIS TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

13625-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. ATLAS CONSTRUCTION CO LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13627-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ANDERSON CARTAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

13630-67-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (APPLICANT) V. BALL BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HERSCHEL, MONTEAGLE, FARADAY, DUNGANNON, WOLLASTON AND LIMERICK, ALL IN THE COUNTY OF HASTINGS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

IN A PREVIOUS CASE AFFECTING THE PRESENT JOB SITE OF THE RESPONDENT THE BOARD ESTABLISHED AN INTERIM GEOGRAPHIC AREA WHICH AREA THE BOARD FINDS ALSO TO BE APPROPRIATE IN THE PRESENT CASE.

13634-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CON-ENG CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13635-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. BASIL (SIMCOE) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13640-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. PETER KIEWIT SONS COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13663-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. M. & D. KENNEDY CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

13509-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. CANADIAN INDUSTRIES LIMITED (RESPONDENT) v. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION AND ITS LOCAL 9-684 (INTERVENER #1) v. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS NOBEL WORKS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, EMPLOYEES IN THE LIGHT, HEAT AND POWER DEPARTMENT AND IN THE POWER HOUSE, ENGINEERING STAFF, LABORATORY TECHNICIANS, OFFICE AND CLERICAL STAFF, AND PLANT GUARDS." (128 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	117
NUMBER OF PERSONS WHO CAST BALLOTS	112
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	70
NUMBER OF BALLOTS MARKED IN FAVOUR OF OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION AND ITS LOCAL 9-684	42

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

13322-67-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER MILL WORKERS (APPLICANT) V. ABITIBI PAPER COMPANY LTD. - HOTEL IROQUOIS (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOTEL IROQUOIS AT IROQUOIS FALLS, SAVE AND EXCEPT STUDENTS TEMPORARILY EMPLOYED FOR THE SUMMER MONTHS (MAY 1 TO SEPTEMBER 30), AND PERSONS REGULARLY EMPLOYED FOR TWENTY-FOUR (24) HOURS PER WEEK OR LESS, REPLACEMENT MANAGEMENT, HOTEL MANAGER AND THOSE ABOVE THE RANK OF REPLACEMENT HOTEL MANAGER." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	16

APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

NO VOTE CONDUCTED

13029-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. USARCO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (130 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 526).

13329-67-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT) V. RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254, OF THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION (INTERVENER). (88 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 539).



13481-67-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 527 (APPLICANT) v. CORNWALL GRAVEL COMPANY LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS YARDS IN THE CITY OF CORNWALL AND AT ITS QUARRY AND ASPHALT PLANT IN THE TOWNSHIP OF CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (12 EMPLOYEES IN THE UNIT).

IN LIGHT OF THE INFORMATION PROVIDED BY THE PARTIES TO THE EXAMINER APPOINTED IN THIS MATTER CONCERNING THE OPERATIONS OF THE RESPONDENT, OTHER THAN ITS CONSTRUCTION ACTIVITIES, AND HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE THE BOARD FURTHER FOUND THE ABOVE UNIT TO BE APPROPRIATE.

(SEE INDEXED ENDORSEMENT PAGE 550).

13486-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. HOWARD S CLARK (RESPONDENT). (2 EMPLOYEES).

13498-67-R: CANADIAN MARITIME UNION (CLC) (APPLICANT) v. UNDERWATER GAS DEVELOPERS LIMITED (RESPONDENT). (16 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 555).

13505-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. HOWARD S CLARK (RESPONDENT). (2 EMPLOYEES).

13515-67-R: LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. RIDEAU VALLEY CONSTRUCTORS LIMITED (RESPONDENT). (5 EMPLOYEES).

13530-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. OUR LADY OF MERCY HOSPITAL (RESPONDENT). (256 EMPLOYEES).

13539-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) v. BALL BROTHERS LIMITED (RESPONDENT). (12 EMPLOYEES).

13543-67-R: DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA, AFL-CIO (APPLICANT) v. BARTON DISTILLING (CANADA) LIMITED (RESPONDENT). (14 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 559).

13544-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 493 (APPLICANT) v. INSPIRATION LIMITED (RESPONDENT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER). (7 EMPLOYEES).

13553-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. INSPIRATION LIMITED (RESPONDENT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 561).



13554-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. CLAIRSON EMPLOYEES' ASSOCIATION (INTERVENER). (5 EMPLOYEES).

13596-67-R: LOCAL UNION 46 - UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. SHELL CANADA LIMITED (RESPONDENT). (32 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 570).

13597-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - LOCAL 79 (INTERVENER). (15 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 573).

13602-67-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. BEAVER FOUNDATIONS LIMITED (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 571).

13605-67-R: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA LOCAL 905 (APPLICANT) V. PRECISION AUTOMOTIVE CO. LIMITED (RESPONDENT). (61 EMPLOYEES).

13619-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. PRECISION RECORD PRODUCTIONS LIMITED (RESPONDENT). (36 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 576).

13662-67-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1891 (APPLICANT) V. WENZEL DRYWALL LIMITED (RESPONDENT). (4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 577).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

13393-67-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. DU PONT OF CANADA LIMITED (RESPONDENT) V. KINGSTON INDEPENDENT NYLON WORKERS UNION (INTERVENER #1) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER #2).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS NYLON MANUFACTURING PLANT IN THE TOWNSHIP OF KINGSTON, COUNTY OF FRONTENAC, KNOWN AS ITS KINGSTON WORKS, WHO ARE PAID AT AN HOURLY RATE SAVE AND EXCEPT OFFICE STAFF, GUARDS, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (1562 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	1562
NUMBER OF PERSONS WHO CAST BALLOTS	1310
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF SPOILED BALLOTS	164
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	705
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
DISTRICT 50, UNITED MINE WORKERS OF	
AMERICA, LOCAL 13160	439

13447-67-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. COCA-COLA LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE STAFF, CHEMISTS AND LABORATORY TECHNICIANS EMPLOYED IN THE QUALITY CONTROL DEPARTMENT, SPECIAL SALESMEN, FOREMEN, AND PERSONS ABOVE THE RANKS OF SPECIAL SALESMAN AND FOREMAN." (387 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	325
NUMBER OF PERSONS WHO CAST BALLOTS	323
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	161
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	159

(SEE INDEXED ENDORSEMENT PAGE 548 ).

13476-67-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. STANDARD PRODUCTS (STRATFORD) LIMITED (RESPONDENT) V. CANADIAN RUBBER WORKERS UNION No. 154 - N.C.C.L. (INTERVENER).

VOTING CONSTITUENCY: "ALL HOURLY-RATED EMPLOYEES OF THE RESPONDENT AT ITS PLANT No. 1, 1030 ERIE STREET, AND AT ITS PLANT No. 2, 342 ERIE STREET, AT STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE EMPLOYEES, PLANT GUARDS AND PART-TIME EMPLOYEES." (211 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	164
NUMBER OF PERSONS WHO CAST BALLOTS	162

NUMBER OF SPOILED BALLOTS .	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	40
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	120

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12408-66-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V.  
ST. LAWRENCE TEXTILES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(163 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	105
NUMBER OF PERSONS WHO CAST BALLOTS	35

BALLOT BOX SEALED.

12781-66-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVER, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. KILMER VAN NOSTRAND CO. LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PREMISES ON WILSON AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND EMPLOYEES FOR WHO THE APPLICANT AND THE INTERVENER PRESENTLY HOLD BARGAINING RIGHTS." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18

13190-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE GENERAL FIREPROOFING COMPANY (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(66 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	61
NUMBER OF PERSONS WHO CAST BALLOTS	61
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	28
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	31

13234-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED (RESPONDENT) v. CANADIAN OFFICE EMPLOYEES UNION No. 159 - N.C.C.L. (INTERVENER) v. CANADIAN BUSINESS MACHINE WORKERS' UNION - N.C.C.L. (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 222 LANSLOWNE AVENUE, TORONTO 3, ONTARIO, AND 15 MARMAC DRIVE, REXDALE, ONTARIO, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, SALARIED OFFICE STAFF, SALES AND SERVICE EMPLOYEES, CAFETERIA STAFF, PLANT GUARDS AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (471 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	449
NUMBER OF PERSONS WHO CAST BALLOTS	438
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	196
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF CANADIAN BUSINESS MACHINE WORKERS'	
UNION - N.C.C.L.	241

13323-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. THOMAS BUILT BUSES OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND SECURITY GUARDS." (78 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	62
NUMBER OF PERSONS WHO CAST BALLOTS	61
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	25
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	36

13324-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) v. RAYCO STAMPING PRODUCTS LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (47 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8

13328-67-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. YORK UNIVERSITY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #1) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION (INTERVENER #2) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL SECURITY GUARDS IN THE EMPLOY OF THE RESPONDENT SAVE AND EXCEPT THE CHIEF OF SECURITY." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

13497-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TAYLOR GARAGE DOORS OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	37
NUMBER OF PERSONS WHO CAST BALLOTS	37
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	27

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

13487-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. GENERAL FIREPROOFING COMPANY (RESPONDENT). (60 EMPLOYEES).

13513-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. KELTON CORPORATION LIMITED (RESPONDENT). (210 EMPLOYEES).

13580-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. WALTERSON PATTERN WORKS LIMITED (RESPONDENT). (4 EMPLOYEES).

13581-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 1036 (APPLICANT) V. ATLAS ASBESTOS COMPANY, DIVISION OF BELL ASBESTOS MINE LTD. (RESPONDENT). (4 EMPLOYEES).

13600-67-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. CAMBRIAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY (RESPONDENT). (46 EMPLOYEES).

13604-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. REDFERN CONSTRUCTION COMPANY LIMITED (RESPONDENT). (14 EMPLOYEES).

13626-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. DROPE PAVING AND CONSTRUCTION LIMITED (RESPONDENT). (6 EMPLOYEES).

13628-67-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (LONDON TERMINAL) (RESPONDENT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, B.S.E.I.U. (INTERVENER). (5 EMPLOYEES).

13629-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DIBLEE CONSTRUCTION COMPANY LIMITED (RESPONDENT). (14 EMPLOYEES).

13632-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SUDBURY & DISTRICT HEALTH UNIT (RESPONDENT). (46 EMPLOYEES).

13637-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALEXANDER BAG & BARREL (ONT.) LIMITED (RESPONDENT). (5 EMPLOYEES).

13654-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. BLUE RIBBON CONCRETE MATERIALS LIMITED (RESPONDENT). (23 EMPLOYEES).

13665-67-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADA SAND PAPERS LIMITED, PLATTSVILLE, ONTARIO (RESPONDENT). (6 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING SEPTEMBER

13268-67-R: VERNER PEDERSEN (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA - LOCAL UNION 93 (RESPONDENT) V. UNIFORM BUILDERS LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF UNIFORM BUILDERS LIMITED IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."  
(5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	4

13352-67-R: MR. WALTER WEBB (APPLICANT) V. THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (RESPONDENT) V. BRUCE MACDONALD MOTOR HOTEL, 1400 CARLING AVENUE, OTTAWA (EMPLOYER). (GRANTED).

UNIT: "ALL FULL-TIME AND REGULAR PART-TIME EMPLOYEES OF BRUCE MACDONALD MOTOR HOTEL AT OTTAWA EMPLOYED IN THE ENGINEERING AND MAINTENANCE, HOUSE-KEEPING, LAUNDRY, SERVICE, KITCHEN, DINING ROOM, COCKTAIL LOUNGE AND BANQUET DEPARTMENTS AT ITS HOTEL AT 1400 CARLING AVENUE, OTTAWA."  
(51 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	36
NUMBER OF PERSONS WHO CAST BALLOTS	36
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	33

13416-67-R: CLAYTON CHAMBERS AND EMPLOYEES OF NORFISH LTD. (APPLICANT) V. UNITED PACKINGHOUSE FOOD & ALLIED WORKERS L.U. No 1189 (RESPONDENT) V. NORFISH LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL EMPLOYEES OF NORFISH LIMITED AT PORT DOVER SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF."  
(12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	12

NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	9

13511-67-R: NICODEMO MAMMOLA (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT) V. VILLAGE CONTRACTORS (INTERVENER). (20 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 579).

13577-67-R: 'EMPLOYEES OF LLOYD GEORGE HOTEL, NOW KNOWN AS THREE VEES CO LTD LLOYD GEORGE HOTEL IN CORNWALL, ONTARIO (APPLICANTS) V. HOTEL, MOTEL AND RESTAURANT EMPLOYEES UNION LOCAL NO 899 (RESPONDENT). (22 EMPLOYEES). (DISMISSED).

13617-67-R: UNIQUE WINDOW CLEANING HAROLD LONDON (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 847 (RESPONDENT). (2 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 584).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING SEPTEMBER

13549-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DOMINION ELECTRIC MANUFACTURING Co. LTD. (RESPONDENT) V. FEDERAL LABOUR UNION, LOCAL 24892, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

13618-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 2562 (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 18 (RESPONDENT). (DISMISSED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING SEPTEMBER

13586-67-U: TORONTO PLASTERING COMPANY LTD. (APPLICANT) V. LATHERS INTERNATIONAL UNION, LOCAL 97 (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 584 ).

13648-67-U: HARDING CARPETS LIMITED (APPLICANT) V. THE CANADIAN TEXTILE COUNCIL LOCAL 501 (RESPONDENT). (WITHDRAWN).

13655-67-U: CANADIAN TEXTILE COUNCIL, LOCAL 501 (APPLICANT) V. HARDING CARPETS LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

13432-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT). (DISMISSED).



( SEE INDEXED ENDORSEMENT PAGE 586 ).

13433-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT). (DISMISSED).

13434-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT). (DISMISSED).

13579-67-U: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (APPLICANT). V. TOWNSHIP OF BLEZARD (RESPONDENT). (WITHDRAWN).

13587-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. PETER AUSTIN MANUFACTURING COMPANY (RESPONDENT). (WITHDRAWN).

13588-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. KELTON CORPORATION LIMITED (RESPONDENT). (DISMISSED).

13657-67-U: HARDING CARPETS LIMITED (APPLICANT) V. THE CANADIAN TEXTILE COUNCIL LOCAL 501 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT) DISPOSED  
OF DURING SEPTEMBER

1-67-PH: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U. (APPLICANT) V. THE NORFOLK HOSPITAL ASSOCIATION AT SIMCOE, ONTARIO (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING  
SEPTEMBER

13125-67-U: AMALGAMATED CLOTHING WORKERS UNION OF AMERICA (COMPLAINANT) V. SEAWAY APPAREL LTD. (RESPONDENT). (WITHDRAWN).

13305-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. G. W. MARTIN LUMBER LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 590 ).

13378-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT). (GRANTED).

- AND -

13399-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT). (GRANTED).

- AND -

13413-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 593 ).

13405-67-U: H. K. FISCHER (COMPLAINANT) V. THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS AND LOCAL 128 OF THAT UNION AND PROCOR LTD. (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 600 ).

13418-67-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. DAVIDSON RUBBER COMPANY INCORPORATED (RESPONDENT). (WITHDRAWN).

13502-67-U: LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. INTERNATIONAL COOPERAGE COMPANY OF CANADA LIMITED, MILTON, ONTARIO (RESPONDENT). (WITHDRAWN).

13531-67-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. WENTWORTH MOULD & DIE COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

13560-67-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. HOWARD S. CLARK LTD. (RESPONDENT). (WITHDRAWN).

13573-67-U: READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 230 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. RIO LUMBER COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

13607-67-U: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. CURTIS BEVERAGES LTD. (RESPONDENT). (WITHDRAWN).

13609-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (COMPLAINANT) V. PRECISION AUTOMOTIVE CO. LTD. (RESPONDENT). (WITHDRAWN).

13611-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. BARBER BARREL AND DRUM COMPANY LTD. (RESPONDENT). (WITHDRAWN).

13614-67-U: GORDON YAKE (COMPLAINANT) V. CANADIAN LINEN SUPPLY ONTARIO LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING SEPTEMBER

13106-67-M: WESTEEL-ROSCO LIMITED (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AND UNITED STEELWORKERS OF AMERICA (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79A DISPOSED OF DURING

SEPTEMBER

13471-67-M: LOCAL #949, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (TRADE UNION) V. RUSS CONSTRUCTION (LONDON) LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 601).

13550-67-M: INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 618 (TRADE UNION) V. VIO BIN (CANADA) LIMITED, DOMINION BIRD & PET SUPPLY LIMITED, CANADIAN AQUARIUM SUPPLY CO. LIMITED (EMPLOYERS).

JURISDICTIONAL DISPUTES

13484(A)-67-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 605).

13599(A)-67-JD: REDFERN CONSTRUCTION COMPANY LIMITED (COMPLAINANT) V. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 793 AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 606).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12968-67-R: INTERNATIONAL UNION, UNITED AUTOMOVILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. BENDIX ECLIPSE OF CANADA LIMITED (RESPONDENT). (EMPLOYEE (OBJECTOR)). (REQUEST DENIED).

13184-67-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. NATURFLEX (CANADA) LIMITED (RESPONDENT). (REQUEST DENIED).

13190-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE GENERAL FIREPROOFING COMPANY (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

SEE INDEXED ENDORSEMENT PAGE 608).

13487-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. GENERAL FIREPROOFING COMPANY (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 609 ).

13519-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. RIO LUMBER CO. LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 612).

13597-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - LOCAL 79 (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 612).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

12697-66-U: GEORGE THOMAS (COMPLAINANT) V. COLLINGWOOD SHIPYARDS (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 613).

12810-66-U: INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION, LOCAL #8 (COMPLAINANT) V. DOMINION LUGGAGE CO. LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 615).

INDEXED ENDORSEMENTS - CERTIFICATION

11476-65-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE UNIVERSITY OF GUELPH (RESPONDENT) V. CANADIAN GUARDS ASSOCIATION (INTERVENER) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: D. F. O. HERSEY AND G. O. JONES FOR THE APPLICANT, C. A. MORLEY, J. E. HURST AND J. M. SUTHERLAND FOR THE RESPONDENT, NO ONE APPEARING FOR CANADIAN GUARDS ASSOCIATION, NO ONE APPEARING FOR THE CANADIAN UNION OF OPERATING ENGINEERS B.M. PAULIN AND RICHARD F. KING FOR VERSAFOOD SERVICES LIMITED.

DECISION OF THE BOARD: SEPTEMBER 11, 1967.

1. IN ITS ENDORSEMENT OF THE RECORD DATED JULY 31ST, 1967, THE BOARD DIRECTED THAT THIS MATTER BE LISTED FOR HEARING FOR THE PURPOSE, INTER ALIA, OF ENTERTAINING THE REPRESENTATIONS OF THE PARTIES AS TO THE EMPLOYMENT STATUS OF PERSONS ENGAGED IN FOOD SERVICES AT THE UNIVERSITY OF GUELPH. NOTICE OF THIS HEARING WAS SERVED UPON VERSAFOOD SERVICES LIMITED. IN AN APPLICATION BEFORE ANOTHER PANEL OF THIS BOARD, VERSAFOOD SERVICES LIMITED HAS BEEN ALLEGED TO BE THE EMPLOYER OF THE PERSONS IN QUESTION, AS WELL AS OF OTHERS. COUNSEL FOR VERSAFOOD SERVICES LIMITED



ATTENDED AT THE HEARING OF THIS MATTER AND PARTICIPATED IN ITS PROCEEDINGS.

2. THE APPLICANT AND THE RESPONDENT HAD AGREED TO A STATEMENT OF FACTS RELATING TO THE EMPLOYMENT OF PERSONS ENGAGED IN FOOD SERVICE OPERATIONS. THIS STATEMENT IS CONTAINED IN THE INTERIM REPORT OF THE EXAMINER IN THIS MATTER DATED JANUARY 3RD, 1967. AT THE HEARING HELD ON AUGUST 22ND, 1967, COUNSEL FOR VERSAFOOD SERVICES LIMITED INDICATED HIS ACCEPTANCE OF THAT STATEMENT AS CONSTITUTING THE FACTS UPON WHICH THE ISSUE WAS TO BE DECIDED. HAVING REGARD TO THE FACTS CONTAINED IN THE INTERIM REPORT OF THE EXAMINER IT IS OUR CONCLUSION THAT THE PERSONS IN QUESTION ARE NOT EMPLOYEES OF THE RESPONDENT. IN OUR VIEW THE DIRECTION AND CONTROL OF THESE PERSONS IS EXERCISED BY VERSAFOOD SERVICES LIMITED. IT IS OUR FINDING THAT THESE PERSONS ARE EMPLOYEES OF VERSAFOOD SERVICES LIMITED. THE APPLICANT'S REQUEST THAT THE BOARD DETERMINE A BARGAINING UNIT, INCLUDING SUCH PERSONS AS EMPLOYEES OF THE RESPONDENT IS ACCORDINGLY DENIED.

3. HAVING CONSIDERED THE REPRESENTATIONS OF THE APPLICANT AND THE RESPONDENT, AS WELL AS THE AGREEMENT OF THE PARTIES RELATING TO THE DESCRIPTION OF THE BARGAINING UNIT AND THE MATTERS CONTAINED IN THE REPORT OF THE EXAMINER DATED JUNE 5TH, 1967, THE BOARD FINDS THE FOLLOWING UNIT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING:-

ALL EMPLOYEES OF THE RESPONDENT EMPLOYED OR NORMALLY PERFORMING A MAJOR PART OF THEIR WORK AT ITS CAMPUS AT GUELPH ENGAGED IN CLERICAL OR STENOGRAPHIC PURSUITS, OR PERFORMING DUTIES AS TECHNICIANS OR THEIR ASSISTANTS, OR PERFORMING AGRICULTURAL DUTIES IN THE ONTARIO VETERINARY COLLEGE OR IN THE HORTICULTURE DEPARTMENT OF THE ONTARIO AGRICULTURAL COLLEGE, SAVE AND EXCEPT:

- (1) MEMBERS OF THE UNIVERSITY FACULTY;
- (2) ALL PERSONS EMPLOYED IN THE DIRECTORATE OF PERSONNEL;
- (3) SECRETARIES TO ACADEMIC AND ADMINISTRATIVE DEPARTMENT HEADS AND TO PERSONS ABOVE THOSE RANKS;
- (4) ALL PERSONS EMPLOYED IN THE PAYROLL SECTION OF THE CHIEF ACCOUNTANT'S DEPARTMENT;
- (5) ALL PERSONS EMPLOYED IN THE BURSAR'S OFFICE;
- (6) ALL PERSONS EMPLOYED IN ADMINISTRATIVE ELECTRONIC DATA PROCESSING AND ITS ANCILLARY SERVICES;

- (7) ALL PERSONS EMPLOYED IN A PROFESSIONAL CAPACITY IN THE FIELDS OF ENGINEERING, ACCOUNTING, PURCHASING, LIBRARY SCIENCE, ADMINISTRATION, MEDICINE, NURSING AND STUDENT COUNSELLING;
- (8) ADMINISTRATIVE AND EXECUTIVE ASSISTANTS TO DEPARTMENT HEADS OR PERSONS ABOVE THAT LEVEL;
- (9) ENGINEERING ASSISTANTS, FIELD CO-ORDINATORS, AND PERSONS ABOVE THOSE LEVELS IN THE DIRECTORATE OF PHYSICAL RESOURCES;
- (10) ALL PERSONS EMPLOYED IN THE OFFICES OF THE PRESIDENT, VICE-PRESIDENT ACADEMIC AND VICE-PRESIDENT ADMINISTRATION;
- (11) ALL PERSONS PAID FROM TRUST FUNDS AND GRANTS;
- (12) ALL PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK;
- (13) STUDENTS ENROLLED IN THE UNIVERSITY;
- (14) EMPLOYEES OF THE UNIVERSITY OF QUELPH DEVELOPMENT FUND;
- (15) THE SUPERVISING AND CONFIDENTIAL CLERK IN THE OFFICE OF THE DEAN OF MACDONALD INSTITUTE;
- (16) THE CONFIDENTIAL CLERK IN THE DEPARTMENT OF ANIMAL SCIENCE AND IN ANY OTHER DEPARTMENT WHERE THE PERSONNEL STRENGTH IS GREATER THAN 50 AND SUCH APPOINTMENT IS DEEMED NECESSARY BY THE UNIVERSITY;
- (17) SPORTS COACHES IN THE SCHOOL OF PHYSICAL EDUCATION;
- (18) PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED DECEMBER 15TH, 1965, ISSUED TO THE CANADIAN GUARDS ASSOCIATION;
- (19) PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED DECEMBER 15TH, 1965, ISSUED TO THE CANADIAN UNION OF OPERATING ENGINEERS;
- (20) MACHINE ROOM SUPERVISOR IN THE DEPARTMENT OF ANIMAL SCIENCE;
- (21) THE SWITCHBOARD SUPERVISOR;
- (22) THE SUPERVISING CLERK IN THE REGISTRAR'S OFFICE;

- (23) THE AGRICULTURAL SUPERVISOR IN THE DEPARTMENT OF HORTICULTURE;
- (24) THE TWO SUPERVISING TECHNICIANS IN THE DEPARTMENT OF HORTICULTURE;
- (25) THE SUPERVISING TECHNICIAN IN THE DEPARTMENT OF ANIMAL SCIENCE (BREEDERS' SERVICES);
- (26) THE AGRICULTURAL SUPERVISOR [AND THE SUPERVISING TECHNICIANS] IN THE DEPARTMENT OF PHYSIOLOGICAL SCIENCES;
- (27) THE AGRICULTURAL SUPERVISOR, (LARGE ANIMAL CLINIC) DEPARTMENT OF CLINICAL STUDIES, ONTARIO VETERINARY COLLEGE;
- (28) THE SUPERVISING AGRICULTURAL WORKER, DEPARTMENT OF AVIAN PATHOLOGY, ONTARIO VETERINARY COLLEGE;
- (29) THE SUPERVISING TECHNICIAN, (SMALL ANIMAL CLINIC) DEPARTMENT OF CLINICAL STUDIES, O.V.C.;
- (30) THE SUPERVISING AGRICULTURAL WORKER, DEPARTMENT OF NUTRITION;
- (31) THE SUPERVISING TECHNICIAN, DEPARTMENT OF VETERINARY BACTERIOLOGY;
- (32) THE SUPERVISING TECHNICIAN, DEPARTMENT OF MICROBIOLOGY.

4.

FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT:

- (1) W. A. ALLAN, R. E. BELL AND J. H. BOSMAN ARE ENGAGED IN AGRICULTURE WITHIN THE MEANING OF SECTION 2(B) OF THE LABOUR RELATIONS ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT. IN OUR VIEW, OTHER PERSONS ALLEGED BY THE RESPONDENT TO BE ENGAGED IN AGRICULTURE, AND WHO ARE DEALT WITH IN THE EXAMINER'S REPORT, ARE NOT ENGAGED IN AGRICULTURE WITHIN THE MEANING OF THE ACT AND ARE INCLUDED IN THE BARGAINING UNIT. IN CONCURRING IN THESE DETERMINATIONS, BOARD MEMBER E. BOYER SHOULD NOT BE TAKEN AS IN ANY WAY ALTERING THE VIEWS EXPRESSED IN HIS DISSENTING OPINION APPEARING ON THE ENDORSEMENT OF THE RECORD DATED SEPTEMBER 20TH, 1966.
- (2) M. L. RAE IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY WITH RESPECT TO LABOUR RELATIONS AND IS INCLUDED IN THE BARGAINING UNIT.

(3) K. B. DUNCAN, A. NELSON, J. A. RANDALL, J. A. SMITH, G. D. AMOS AND P. G. CAREY DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

(4) W. TURNER AND F. H. BELCHER EXERCISE MANAGERIAL FUNCTIONS AND ARE EXCLUDED FROM THE BARGAINING UNIT.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 10TH, 1966, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

12968-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. BENDIX ECLIPSE OF CANADA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: WEBSTER CORNWALL AND JOSEPH MALONEY FOR THE APPLICANT, CHAS. J. CLARK, Q.C., AND G. E. KOCH FOR THE RESPONDENT, NO ONE FOR THE OBJECTOR.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, FOR THE MAJORITY, AND DISSENTING DECISIONS OF BOARD MEMBERS E. BOYER AND R. W. TEAGLE: SEPTEMBER 11, 1967.

1. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JULY 19TH, 1967 IN THIS MATTER, A HEARING WAS HELD BY THE BOARD TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES EMPLOYED BY THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PRIVATE SECRETARY TO THE GENERAL MANAGER, PRIVATE SECRETARY TO THE GENERAL SALES MANAGER, SALES REPRESENTATIVES, STUDENTS EMPLOYED ON A UNIVERSITY CO-OPERATIVE BASIS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.



4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT

PAUL JEFFREY ALLSOP, SENIOR TEST TECHNICIAN  
DONALD STUART KETT, TEST STAND MAINTENANCE TECHNICIAN  
DOUGLAS C. NEILSON, TEST TECHNICIAN  
CAROL ANN UPHAM, SWITCHBOARD/RECEPTIONIST  
CHARLES FREDERICK USHER, TOOL DESIGNER

ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT, AND THAT

ALLAN JOHN DIGGINS, PERSONNEL ADMINISTRATOR  
DONALD R. MURDOCK, PRODUCTION CONTROL ADMINISTRATOR  
PATRICK S. REID, PERSONNEL ASSISTANT  
GEORGE MARTIN SPENCE, PLANT ENGINEER

EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. THE REPORT OF THE EXAMINER DEALT WITH A GREAT NUMBER OF OTHER PERSONS WHOM THE APPLICANT CLAIMS WERE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT DEFINED ABOVE. WHILE IT IS ACKNOWLEDGED THAT THE JOBS OF SOME OF THESE PERSONS CAN BE DESCRIBED AS BORDERLINE CASES, THE BOARD HAS TAKEN INTO CONSIDERATION WHAT THE EVIDENCE DISCLOSED TO BE THEIR MAIN FUNCTIONS. IN ADDITION TO THEIR MAIN FUNCTIONS SOME OF THESE EMPLOYEES HAVE CERTAIN INCIDENTAL FUNCTIONS WHICH WERE EXERCISED ON ISOLATED OCCASIONS AND SUCH INCIDENTAL FUNCTIONS ARE NOT SUFFICIENT TO EXCLUDE THE PERSONS FROM COLLECTIVE BARGAINING. ALSO, SOME OF THE PERSONS EXAMINED ACCUMULATED INFORMATION WHICH WAS COMPILED IN A CERTAIN FORM FOR OTHER PERSONS, WHO WERE MEMBERS OF MANAGEMENT, TO ACT UPON. SUCH ACTIVITY IS NOT, IN OUR OPINION, A MANAGEMENT FUNCTION. OTHER PERSONS HAVING A CERTAIN JOB TITLE, DID NOT, ACCORDING TO THE EVIDENCE, EXERCISE FUNCTIONS SIMILAR TO THOSE OF PERSONS WHO HAVE THE SAME JOB TITLE IN ANOTHER DEPARTMENT. THESE FACTORS CONTRIBUTED TO THE DIFFICULTY WITH WHICH THE BOARD HAD TO FACE IN THIS MATTER. HOWEVER, THE BOARD APPLIED THE CRITERIA AND PRINCIPLES SET FORTH IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, AT P. 379, AND THE CASES THEREIN REFERRED TO.

6. HAVING APPLIED THE CRITERIA REFERRED TO ABOVE TO THE EVIDENCE IN THIS MATTER, FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT JACQUELINE OLIVIER, ILLEAN POPOV, DONNA LINDSAY, ROBERT L. MORKIN, LOUIS JULIAN BEDNARICK, MORLENE FAUTEUX, DONALD R. AUSTIN (WHO SEVERED HIS EMPLOYMENT WITH THE RESPONDENT SUBSEQUENT TO THE DATE OF THE MAKING OF THIS APPLICATION BUT WHOSE DUTIES ARE DESCRIBED IN THE EVIDENCE OF MR. DUQUETTE AND MR. MADDOCK) MIGNONNE PERRAULT, AUDREY HATALEY, PETER JANKOV, ARTHUR LINWOOD TRELEAVEN, JAMES HANCOCK SMITH, FRANCES BELLIS, LAWRENCE GEORGE TAYLOR, LEONARD L. BRADD, MARGARET ROSBACK, AND ROYDEN DELOS WHITEHEAD DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A

CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

7. FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER DECLARES THAT PETER KUSHLA, ROBERT HRICKOVIAN, ROBERT PRESTON SPENCE, THOMAS A. PHILP, ALEXANDER KOVOSI, ROBERT IAN ARMSTRONG, WILLIAM G. MILLER, ADAM J. WESLOSKI, JACK SHARP AND ROBERT LUTZ EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 17TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER E. BOYER: SEPTEMBER 11, 1967.

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO PETER KUSHLA, ROBERT HRICKOVIAN, ROBERT PRESTON SPENCE, THOMAS A. PHILP, ALEXANDER KOVOSI, AND JACK SHARP WHOM I WOULD FIND DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND SHOULD BE INCLUDED IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER R. W. TEAGLE: SEPTEMBER 11, 1967.

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO JACQUELINE OLIVIER, ILLEAN POPOV, PETER JANKOV, ARTHUR LINWOOD TRELEAVEN AND JAMES HANCOCK SMITH WHOM I WOULD FIND EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

13029-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. USARCO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: LORNE INGLE AND B. STETSON FOR THE APPLICANT, E. L. STRINGER FOR THE RESPONDENT, JOHN L. JASKULA FOR THE OBJECTORS.

DECISION OF THE BOARD:

SEPTEMBER 25, 1967.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED AUGUST 23RD, 1967, A HEARING WAS HELD TO AFFORD THE PARTIES AN OPPORTUNITY TO MAKE REPRESENTATIONS AS TO WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.
3. THE COMPANY OPERATES OUT OF TWO LOCATIONS IN HAMILTON, THE STRATHEARNE YARD AND THE WELLINGTON YARD, WHICH ARE LOCATED APPROXIMATELY 2½ MILES APART. THE STRATHEARNE YARD HANDLES AND PROCESSES PRIMARILY FERROUS SCRAP METAL. THE WELLINGTON YARD HANDLES AND PROCESSES NON-FERROUS SCRAP METAL.
4. IT APPEARS THAT THE RESPONDENT COMPANY MAY BE DESCRIBED AS A "FAMILY CONCERN". MR. F. LEVY, THE PRESIDENT AND GENERAL MANAGER, TAKES AN ACTIVE PART IN THE DAY TO DAY ACTIVITIES OF THE COMPANY AND EXERCISES EFFECTIVE CONTROL OVER ALL PHASES OF THE COMPANY'S OPERATIONS. HE DIVIDES HIS TIME BETWEEN THE TWO LOCATIONS OF THE COMPANY.
5. THE SCRAP METALS ARE COLLECTED FROM THE SAME SOURCES OF SUPPLY, ARE BROUGHT TO THE COMPANY'S YARDS BY THE COMPANY'S TRUCKS WHERE THE SCRAP IS SORTED, SHEARED, BURNED, PRESSED AND BUNDLED BY THE COMPANY'S EMPLOYEES AND SHIPPED TO CUSTOMERS ON THE COMPANY'S TRUCKS. THE WELLINGTON YARD ALSO HAS A SMELTING OPERATION.
6. SINCE MANY OF THE LOADS OF SCRAP CONTAIN BOTH FERROUS AND NON-FERROUS METALS, THE LOADS ARE USUALLY TRUCKED TO THE STRATHEARNE YARD IF THE LARGEST PORTION OF THE LOAD IS COMPOSED OF FERROUS METAL SCRAP, OR IN THE ALTERNATIVE TO THE WELLINGTON YARD IF THE LOAD IS MAINLY NON-FERROUS METAL SCRAP. THE LOADS ARE THEN SORTED AND THE SCRAP NOT HANDLED BY THE YARD TO WHICH THE LOAD IS INITIALLY DELIVERED IS THEN SHIPPED TO THE OTHER YARD.
7. THE EVIDENCE DISCLOSES THAT THERE ARE ABOUT TEN INSTANCES OF REGULAR INTERCHANGE AND INTERMINGLING AMONG EMPLOYEES OF THE TWO PLANTS. THESE INSTANCES CAN BE ENUMERATED AS FOLLOWS. ALL MAJOR MECHANICAL WORK REQUIRED TO BE DONE BY THE WELLINGTON YARD IS DONE BY THE MAINTENANCE MEN FROM THE STRATHEARNE YARD. WHEN A BREAKDOWN OCCURS TWO OR THREE MAINTENANCE MEN COME FROM THE STRATHEARNE YARD TO PERFORM WORK. AUTO MECHANICS OR OTHER GARAGE EMPLOYEES ARE SENT TO THE WELLINGTON YARD FROM THE STRATHEARNE YARD IF A TRUCK BREAKS DOWN. THE COMPANY ALSO EMPLOYS ONE ELECTRICAL MAINTENANCE MAN WHO WORKS OUT OF THE STRATHEARNE YARD BUT WHO DOES ALL THE ELECTRICAL MAINTENANCE WORK AT THE WELLINGTON YARD AS WELL. THE ELECTRICAL MAINTENANCE MAN DOES WORK IN THE WELLINGTON YARD ON AN AVERAGE OF TWO OR THREE TIMES A WEEK. OF THE 18 TRUCKS OPERATED BY THE RESPONDENT HAULING SCRAP METALS, NINE RUN INTO AND OUT OF BOTH WELLINGTON AND STRATHEARNE YARDS. THE DRIVERS OF THESE TRUCKS COME



UNDER THE SUPERVISION OF MANAGEMENT AT THE YARD AT WHICH THEY ARE WORKING AT ANY ONE TIME. THE DISPATCHER IS LOCATED AT THE STRATHEARNE YARD.

8. THERE IS A POOL OF SIX LABOURERS AT THE STRATHEARNE YARD, AN AVERAGE OF ONE OR TWO OF WHOM ARE ASSIGNED EACH DAY TO RIDE WITH THE TRUCKS TO HELP LOAD NON-FERROUS METAL AND THEM COME TO THE WELLINGTON YARD TO HELP UNLOAD THE TRUCKS. WHEN AT THE WELLINGTON YARD THE LABOURERS TAKE ORDEBS FROM THE WELLINGTON SUPERVISION. IN ADDITION, THERE ARE THREE EMPLOYEES AT THE STRATHEARNE YARD WHO ARE ENGAGED FULL-TIME STRIPPING ALUMINUM AND OTHER METALS FROM SCRAP MOTORS AND THEN SHIP THE ALUMINUM AND OTHER METALS TO WELLINGTON FOR FINAL PROCESSING. THE MOBILE CRANE OPERATOR STATIONED AT THE STRATHEARNE YARD GOES TO THE WELLINGTON YARD WHEN REQUIRED AND HAS SPENT A CONTINUOUS PERIOD OF THREE TO FOUR WEEKS AT THE WELLINGTON YARD. THERE IS ONE BUILDING AND MAINTENANCE REPAIR MAN WHO WORKS OUT OF THE WELLINGTON YARD BUT GOES TO THE STRATHEARNE YARD WHEN REQUIRED. TWO OR THREE METAL SORTERS FROM WELLINGTON STREET SOMETIMES GO TO THE STRATHEARNE STREET YARD TO OVERSEE AND DIRECT STRATHEARNE SHEAR MEN IN THE SHEARING OF NON-FERROUS METALS. AT STRATHEARNE STREET THE WELLINGTON STREET METAL SORTERS AND THE STRATHEARNE SHEAR CREW UNLOAD AND LOAD THE TRUCK. WHEN AT STRATHEARNE THE WELLINGTON METAL SORTERS ARE UNDER STRATHEARNE SUPERVISION. ONE STRATHEARNE EMPLOYEE WORKS AS A TRUCK DRIVER OUT OF STRATHEARNE FOR FIVE DAYS A WEEK AND ON SATURDAYS WORKS AT WELLINGTON STREET LOADING SCRAP IN THE MORNING AND ACTING AS WATCHMAN IN THE AFTERNOON. IN ADDITION, THERE IS ONE EMPLOYEE WHOSE IMMEDIATE SUPERIOR IS LOCATED AT THE STRATHEARNE PLANT AND THIS EMPLOYEE HAULS MATERIAL INTO BOTH PLANTS FROM WINDSOR. THIS EMPLOYEE REPORTS FIFTY PER CENT OF HIS TIME TO ONE PLANT AND FIFTY PER CENT OF THIS TIME TO THE OTHER AND CARRIES HIS PUNCH CARD WITH HIM WHICH IS PUNCHED AT THE TIME CLOCK LOCATED AT EITHER PLANT.

9. AS INDICATED ABOVE, SCRAP DELIVERED TO ONE YARD IS SORTED AND THE SCRAP NOT PROCESSED AT THAT YARD IS SHIPPED TO THE OTHER YARD. IN ADDITION, SOME SCRAP WHICH COMES INTO THE WELLINGTON YARD IS TOO LARGE TO BE PROCESSED THERE AND IS SENT TO THE STRATHEARNE YARD WHERE IT IS SHEARED AND THEN RETURNED TO THE WELLINGTON YARD FOR FURTHER PROCESSING.

10. EMPLOYEES FROM BOTH YARDS ENJOY SIMILAR BENEFITS AND THEY ARE DEALT WITH ADMINISTRATIVELY BY THE COMPANY IN THE SAME MANNER IN THAT THERE IS ONE GENERAL OFFICE WHICH ADMINISTERS ONE PAYROLL, ONE GROUP INSURANCE, ONE PENSION PLAN, ONE UNEMPLOYMENT INSURANCE BULK PAYMENT, ONE ONTARIO HOSPITAL SERVICES COMMISSION REMITTANCE AND ONE INCOME TAX REMITTANCE. THERE IS ALSO ONE ADMINISTRATION DEPARTMENT, ONE PURCHASE DEPARTMENT AND ONE SALES DEPARTMENT WHICH COVER BOTH OPERATIONS.

11. THE APPLICANT ARGUED THAT THE OPERATIONS WERE SUFFICIENTLY DIFFERENT BECAUSE OF THE TYPES OF MATERIALS HANDLED THAT THE EMPLOYEES AT EACH YARD SHOULD FORM SEPARATE BARGAINING UNITS. IT WAS THE RESPONDENT'S POSITION, HOWEVER, THAT THE EMPLOYEES SHARED A COMMUNITY OF INTEREST OF SUCH A NATURE THAT THERE SHOULD BE THE ONE APPROPRIATE BARGAINING UNIT ENCOMPASSING EMPLOYEES AT BOTH LOCATIONS.



12. SOME OF THE FACTORS WHICH THE BOARD TAKES INTO CONSIDERATION WHICH DETERMINE THE APPROPRIATENESS OF BARGAINING UNITS, WHICH INCLUDE EMPLOYEES AT MORE THAN ONE LOCATION MAY BE ENUMERATED AS FOLLOWS:

1. COMMUNITY OF INTEREST OF EMPLOYEES;
2. CENTRALIZATION OF MANAGERIAL AUTHORITY;
3. THE ECONOMIC FACTOR OF ONE BARGAINING UNIT;
4. SOURCE OF WORK.

13. WHEN ALL THESE FACTORS HAVE BEEN TAKEN INTO CONSIDERATION THE BOARD IS ABLE TO DETERMINE WHETHER OR NOT THERE IS AN INTEGRATED OPERATION WHICH INDICATES THE APPROPRIATENESS OF ONE INCLUSIVE BARGAINING UNIT.

14. THESE FOUR MAIN FACTORS WHICH ARE HEREINAFTER CONSIDERED, WHILE INTERDEPENDENT, ARE NOT NECESSARILY OF THE SAME IMPORTANCE.

(1) COMMUNITY OF INTEREST - THIS FACTOR MAY BE DETERMINED BY CONSIDERING THE FOLLOWING CRITERIA:

(A) NATURE OF WORK PERFORMED - IN THE INSTANT CASE, THE EMPLOYEES AT BOTH LOCATIONS PERFORM THE SAME TYPE OF WORK INVOLVING SIMILAR OPERATIONS, EVEN THOUGH DIFFERENT METALS ARE PROCESSED AT THE TWO LOCATIONS;

(B) CONDITIONS OF EMPLOYMENT - SIMILAR WORKING CONDITIONS AND THE SAME FRINGE BENEFITS PREVAIL AT BOTH LOCATIONS;

(C) SKILLS OF EMPLOYEES - THE SKILLS OF THE EMPLOYEES AS A GROUP ARE SIMILAR AT BOTH LOCATIONS;

(D) ADMINISTRATION - THE COMPANY ADMINISTERS BOTH PHASES OF ITS OPERATIONS JOINTLY;

(E) GEOGRAPHIC CIRCUMSTANCES - THE TWO PLANTS IN QUESTION ARE 2½ MILES APART IN THE SAME MUNICIPALITY;

(F) FUNCTIONAL COHERENCE AND INTERDEPENDENCE - THE EVIDENCE DISCLOSES ABOUT TEN INSTANCES OF REGULAR TEMPORARY INTERCHANGE AMONG EMPLOYEES WHO INTERMINGLE WITH EMPLOYEES OF THE OTHER PLANTS. IN ADDITION, ALTHOUGH OF LESS IMPORTANCE, A SUBSTANTIAL PART OF THE PRODUCTION IS AT ONE PLANT AND COMPLETED AT THE OTHER.

(2) CENTRALIZATION OF MANAGERIAL AUTHORITY - THE FOREMAN AND YARD SUPERINTENDENT AT EACH YARD HAVE VERY LITTLE REAL AUTHORITY VESTED IN THEM. FINAL AUTHORITY IS CENTRALIZED IN MR. LEVY WHO EXERCISES IT AT BOTH LOCATIONS ON ALL LEVELS.

(3) ECONOMIC FACTOR - THERE APPEARS TO BE A REAL ECONOMIC ADVANTAGE TO THE COMPANY IN HAVING ONE MAINTENANCE DEPARTMENT AT THE STRATHEARNE YARD WHICH ALSO SERVICES THE WELLINGTON YARD AS REQUIRED. THE TRANSFERABILITY OF EMPLOYEES FROM ONE YARD TO THE OTHER AS NECESSITATED BY THE NATURE OF THE WORK WOULD BE HAMPERED BY TWO SEPARATE BARGAINING UNITS AND THIS COULD CREATE AN ECONOMIC DISADVANTAGE TO THE COMPANY.

(4) SOURCE OF WORK - THE SCRAP DELIVERED TO BOTH YARDS COME FROM THE SAME SOURCE OF SUPPLY AND THIS CONTRIBUTES TO THE NECESSITY OF EMPLOYEES AT ONE YARD SORTING SCRAP WHICH WOULD BE USED AT THE OTHER YARD.

15. AS INDICATED ABOVE, THE FACTORS CONSIDERED IN THIS CASE ARE NOT OF EQUAL IMPORTANCE AND NO SINGLE FACTOR IS NECESSARILY CRUCIAL TO THE DISPOSITION OF THE CASE. HAVING APPLIED THE CRITERIA SET OUT ABOVE TO THE EVIDENCE OF THIS CASE, WE FIND THAT THE RESPONDENT'S BUSINESS CARRIED ON AT THE TWO LOCATIONS IS AN INTEGRATED OPERATION AND IN ALL THE CIRCUMSTANCES, THE EMPLOYEES AT THE TWO LOCATIONS FORM ONE APPROPRIATE BARGAINING UNIT.

16. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

17. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT E. FRIEDRICH, S. NAGY AND J. PIEROG WERE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF DETERMINING THE APPLICANT'S MEMBERSHIP POSITION.

18. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT F. RILEY IS AN EMPLOYEE OF THE RESPONDENT EMPLOYED IN THE BARGAINING UNIT AND THAT J. MACHAUER AND R. WOODS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 2ND, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (j) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. THE APPLICATION IS THEREFORE DISMISSED.

13076-67-R: NURSES' ASSOCIATION PEEL MEMORIAL HOSPITAL (APPLICANT) V. PEEL MEMORIAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INT'L UNION, LOCAL 204 (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: D. F. O. HERSEY, MRS. C. KOZLIK AND MISS ANNE S. GIBBEN FOR THE APPLICANT, G. G. SMITH AND R. S. PENFOLD FOR THE RESPONDENT, AND NORMAN HARPER FOR THE INTERVENER.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: SEPTEMBER 29, 1967.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN, DATED THE 17TH DAY OF AUGUST, 1967, AND TO THE WRITTEN SUBMISSIONS OF THE REPRESENTATIVES OF THE RESPONDENT, DATED AUGUST 22ND, 1967, AND THOSE OF THE REPRESENTATIVES OF THE APPLICANT, DATED AUGUST 24TH, 1967, THE BOARD FINDS THAT HEAD NURSES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT.
3. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, HEAD INSTRUCTRESS IN THE REGISTERED NURSING ASSISTANTS SCHOOL, NURSES PERFORMING IN A NON-NURSING CAPACITY, NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BUILDING SERVICE EMPLOYEES UNION LOCAL 204, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT INSTRUCTRESSES IN THE REGISTERED NURSING ASSISTANTS SCHOOL, OTHER THAN THE HEAD INSTRUCTRESS, ARE INCLUDED IN THE BARGAINING UNIT.
5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 12TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.
6. AN EXAMINATION OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED INDICATES THAT IN A BARGAINING UNIT OF 111 EMPLOYEES 72 OF 84 CARDS FILED STAND UP. OF THESE 72 CARDS 52 ARE DATED LESS THAN ONE YEAR BUT MORE THAN SIX MONTHS PRIOR TO THE DATE OF APPLICATION. IN THESE CIRCUMSTANCES, THE BOARD, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 7(2) OF THE LABOUR RELATIONS ACT AND FOLLOWING ITS USUAL PRACTICE, DIRECTS THAT A REPRESENTATION VOTE BE TAKEN.
7. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.



9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES:

I DISSENT FROM THE MAJORITY WITH RESPECT TO THE EXCLUSION OF HEAD NURSES FROM THE BARGAINING UNIT.

IT IS MY VIEW THAT THE "SUPERVISORY" WORK OF HEAD NURSES IS MORE AKIN TO THAT OF A LEAD HAND THAN OF A FOREMAN'S DUTIES. THE MATTER OF PATIENT CARE IS MORE THE CONCERN OF A HEAD NURSE AND THEREFORE THE MEDICAL TEAM CONCEPT IS MORE APPROPRIATE THAN THE CUSTOMARY INDUSTRIAL PICTURE OF A FOREMAN CONCERNED WITH DIRECTION OF WORKING FORCES, DISCIPLINE, GRIEVANCES CONCERNING PAY, ETC.

13096-67-R: NURSES' ASSOCIATION HAMILTON HEALTH ASSOCIATION (APPLICANT)  
V. HAMILTON HEALTH ASSOCIATION (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE:           SEPTEMBER 6, 1967.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED AUGUST 15TH, 1967, IN THIS MATTER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND ALL THE REPRESENTATIONS OF THE PARTIES,, THE BOARD FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT HAMILTON ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT HEAD NURSES ARE NOT REGULARLY ENGAGED IN THE WORK PERFORMED BY THE GENERAL DUTY NURSES BUT ARE PRIMARILY ENGAGED IN THE SUPERVISION OF THE NURSING STAFF AND HAVE CERTAIN DISCRETIONARY FUNCTIONS OF A MANAGERIAL NATURE, AND ACCORDINGLY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT MR. BRIAN RICHARDSON, A PERSON CLASSIFIED AS A CLINICAL INSTRUCTOR, DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3) (B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.





6. FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER DECLARES THAT MISS S.E.R. SHEARSMITH, A PERSON CLASSIFIED AS A HEALTH NURSE, DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT SINCE THE BOARD HAS EXCLUDED HEAD NURSES FROM THE BARGAINING UNIT THE PARTIES AGREED THAT BECAUSE PERSONS CLASSIFIED BY THE RESPONDENT AS STAFF SUPERVISORS ARE ABOVE THE RANK OF HEAD NURSE AND ACCORDINGLY THEY ALSO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD THEREFORE FINDS THAT STAFF SUPERVISORS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 17TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER E. BOYER: SEPTEMBER 6, 1967.

I DISSENT.

HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, I WOULD HAVE FOUND THAT HEAD NURSES DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT IN THIS MATTER.

13141-67-R: NURSES' ASSOCIATION QUEENSWAY GENERAL HOSPITAL (APPLICANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 6, 1967.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JULY 28TH, 1967, IN THIS MATTER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES MADE IN WRITING WITH RESPECT THERETO, THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN THE TOWNSHIP OF ETOBICOKE ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. FOR THE PURPOSES OF CLARITY, THE BOARD FINDS THAT WHILE HEAD NURSES MAY HAVE SOME INCIDENTAL FUNCTIONS WHICH REQUIRE THEM TO BE ENGAGED IN A NURSING CAPACITY, THEIR PRIMARY FUNCTION IS DIRECTED TOWARDS SUPERVISION OF THE NURSING STAFF, AND THEY ARE REQUIRED TO EXERCISE INDEPENDENT DISCRETIONARY DECISIONS OF A MANAGEMENT NATURE AND ACCORDINGLY THE BOARD FINDS THAT HEAD NURSES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.
5. FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER FINDS THAT PERSONS CLASSIFIED AS SUPERVISORS ARE ABOVE THE RANK OF HEAD NURSE AND FOR SIMILAR REASONS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.
6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 29TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13142-67-R: NURSES' ASSOCIATION QUEENSWAY GENERAL HOSPITAL (APPLICANT) V. QUEENSWAY GENERAL HOSPITAL V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 6, 1967.

. . .

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES MADE IN WRITING WITH RESPECT THERETO, THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK IN THE TOWNSHIP OF ETOBICOKE AND ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD

NURSE, AND PERSONS REFERRED TO IN BOARD CERTIFICATE DATED SEPTEMBER 6TH, 1967, BOARD FILE No. 13141-67-R, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE PURPOSES OF CLARITY, THE BOARD FINDS THAT WHILE HEAD NURSES MAY HAVE SOME INCIDENTAL FUNCTIONS WHICH REQUIRE THEM TO BE ENGAGED IN A NURSING CAPACITY, THEIR PRIMARY FUNCTION IS DIRECTED TOWARDS SUPERVISION OF THE NURSING STAFF, AND THEY ARE REQUIRED TO EXERCISE INDEPENDENT DISCRETIONARY DECISIONS OF A MANAGEMENT NATURE AND ACCORDINGLY THE BOARD FINDS THAT HEAD NURSES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER FINDS THAT PERSONS CLASSIFIED AS SUPERVISORS ARE ABOVE THE RANK OF HEAD NURSE AND FOR SIMILAR REASONS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 29TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13197-67-R: NURSES' ASSOCIATION MCKELLAR GENERAL HOSPITAL (APPLICANT) V. MCKELLAR GENERAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: SEPTEMBER 7, 1967.

1. WHILE THE EVIDENCE SUBMITTED BY THE APPLICANT IN SUPPORT OF ITS STATUS AS A TRADE UNION LEAVES A GREAT DEAL TO BE DESIRED WITH RESPECT TO CARE OF PREPARATION OF ITS DOCUMENTARY EVIDENCE, THE BOARD FINDS THAT THERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH ITS REQUIREMENTS AND ACCORDINGLY FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT FORT WILLIAM ENGAGED IN DIRECT NURSING CARE OF PATIENTS AND IN TEACHING IN ITS SCHOOL OF NURSING, SAVE AND EXCEPT THE DIRECTOR OF HEALTH SERVICES, HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, CLINICAL CO-ORDINATOR AND PERSONS ABOVE THE RANK OF CLINICAL CO-ORDINATOR IN THE



SCHOOL OF NURSING, AND THOSE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.

3. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 8TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

4. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #1.

5. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT FORT WILLIAM ENGAGED IN DIRECT NURSING CARE OF PATIENTS AND IN TEACHING IN ITS SCHOOL OF NURSING REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT THE DIRECTOR OF HEALTH SERVICES, HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, CLINICAL CO-ORDINATOR AND PERSONS ABOVE THE RANK OF CLINICAL CO-ORDINATOR IN THE SCHOOL OF NURSING, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 8TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #2.

8. IT IS TO BE NOTED THAT WHILE THE PARTIES HAVE AGREED TO EXCLUDE "ANY OTHERS EXERCISING MANAGERIAL FUNCTIONS" THIS IS NOT AN OCCUPATIONAL CLASSIFICATION WHICH THE BOARD USUALLY SPECIFICALLY EXCLUDES FROM THE BARGAINING UNIT. HOWEVER, IT SHOULD BE NOTED THAT IF ANY PERSON EMPLOYED IN AN OCCUPATIONAL CLASSIFICATION "EXERCISES MANAGERIAL FUNCTIONS" WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT SUCH PERSON WOULD BE EXCLUDED FROM THE BARGAINING UNIT.

13278-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (APPLICANT)  
V. NU-WAY LAUNDRY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND R.W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 21, 1967.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED SEPTEMBER 1ST, 1967, IN THIS MATTER.
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR AND FORT WILLIAM, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, DRIVERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES AS CONTAINED IN THE LETTER FROM THE RESPONDENT DATED SEPTEMBER 11TH, 1967, AND THE LETTER FROM THE APPLICANT DATED SEPTEMBER 18TH, 1967, THE BOARD DETERMINES THAT K. RONALD, A. SLOZA AND J. STANYK DO NOT EXERCISE MANAGERIAL FUNCTIONS OR ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND WERE EMPLOYEES OF THE RESPONDENT ON THE DATE THIS APPLICATION WAS MADE.
5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT MARIE FIORITO WAS A STUDENT EMPLOYED BY THE RESPONDENT FOR THE SCHOOL VACATION PERIOD AND ACCORDINGLY NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT.
6. THE BOARD ACCORDINGLY FINDS THAT THE LIST OF EMPLOYEES OF THE RESPONDENT ON THE DATE THIS APPLICATION WAS MADE CONTAINS THE NAMES OF A TOTAL OF 53 PERSONS.
7. WHILE THE APPLICANT FILED IN SUPPORT OF ITS APPLICATION 40 MEMBERSHIP DOCUMENTS, ONLY 37 OF THESE DOCUMENTS CORRESPONDED TO NAMES ON THE RESPONDENT'S LIST. THERE WAS FILED IN THIS APPLICATION, HOWEVER, A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS IN OPPOSITION TO THIS APPLICATION SIGNED BY A TOTAL OF 15 PERSONS, OF WHOM THE APPLICANT CLAIMED 8 AS MEMBERS. IF 8 OF THE APPLICANT'S MEMBERSHIP DOCUMENTS ARE CAST IN DOUBT BY THE PETITION THE APPLICANT WOULD NOT HAVE IN EXCESS OF FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AS UNCHALLENGED MEMBERS. THEREFORE, IT IS NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGINATION AND CIRCULATION OF THE PETITION FILED IN OPPOSITION TO THIS APPLICATION.
8. FOR THIS PURPOSE, THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING AT FORT WILLIAM IN ORDER TO AFFORD THE OBJECTORS WITH AN OPPORTUNITY TO ADDUCE EVIDENCE WITH RESPECT TO

THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION.

13329-67-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT) V. RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 OF THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: G. JONES FOR THE APPLICANT, B.M.W. PAULIN AND R.F. KING FOR THE RESPONDENT, W. KITCHING FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 8, 1967.

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3. THE APPLICANT IS SEEKING CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT WHO ARE EMPLOYED AT THE UNIVERSITY OF GUELPH. THE RESPONDENT HAS A CONTRACT WITH THE UNIVERSITY OF GUELPH TO PROVIDE FOOD SERVICES. THAT IS TO SAY, THE RESPONDENT OPERATES UNDER CONTRACT WITH THE UNIVERSITY TWO CAFETERIAS AND A DINING ROOM. THE EMPLOYEES CONCERNED ARE EMPLOYED IN OR DO WORK RELATED TO THE OPERATION OF THE DINING ROOM AND CAFETERIAS.

4. COUNSEL FOR THE RESPONDENT SUBMITS THAT ELIGIBILITY FOR MEMBERSHIP IN THE APPLICANT IS LIMITED TO EMPLOYEES OF THE CROWN OR TO EMPLOYEES OF ANY PUBLIC AUTHORITY OR PUBLIC INSTITUTION. COUNSEL ARGUES THAT THE RESPONDENT CLEARLY DOES NOT FALL WITHIN ANY OF THE ABOVE CLASSIFICATIONS AND ACCORDINGLY THE APPLICANT IS PROHIBITED FROM TAKING INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT. COUNSEL THEREFORE ASSERTS THAT THE APPLICANT CANNOT BE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES CONCERNED IN THE INSTANT APPLICATION.

5. THE APPLICANT WAS INCORPORATED UNDER THE LAWS OF ONTARIO BY LETTERS PATENT DATED JULY 1ST, 1927. SUPPLEMENTARY LETTERS PATENT ISSUED ON APRIL 26TH, 1962. BY THE SUPPLEMENTARY LETTERS PATENT THE NAME OF THE APPLICANT WAS CHANGED FROM "THE CIVIL SERVICE ASSOCIATION OF ONTARIO" TO "THE CIVIL SERVICE ASSOCIATION OF ONTARIO INC.". THE SUPPLEMENTARY LETTERS PATENT ALSO VARIED THE OBJECTS OF THE APPLICANT TO READ AS FOLLOWS:

(A) TO IMPROVE THE EFFICIENCY OF THE SERVICE  
AND TO PROMOTE THE COMMON INTERESTS OF THE  
MEMBERS OF THE CORPORATION;

(B) TO REPRESENT THE MEMBERS OF THE CORPORATION  
AS EMPLOYEES OF THE GOVERNMENT OF THE PROVINCE OF  
ONTARIO OR A BOARD, COMMISSION OR OTHER EMANATION  
OF THE CROWN IN THE RIGHT OF ONTARIO OR AS A  
PUBLIC SERVANT WITHIN THE PROVISIONS OF THE PUBLIC  
SERVICE ACT (ONTARIO) IN MATTERS GOVERNING



APPOINTMENT, PROMOTION, REMUNERATION, VACATION, HOURS OF WORK, SUPERANNUATION, TRANSFER, DISCIPLINE, INCLUDING SUSPENSION, DEMOTION AND DISMISSAL, AND IN MATTERS RELEVANT TO CONDITIONS OF WORK; AND

(c) TO ENTER INTO ANY ARRANGEMENTS WITH ANY AUTHORITIES, GOVERNMENTAL, MUNICIPAL, LOCAL OR OTHERWISE, THAT MAY SEEM CONDUCTIVE TO THE CORPORATION'S RIGHTS, PRIVILEGES AND CONCESSIONS WHICH THE CORPORATION MAY THINK DESIRABLE TO OBTAIN AND TO CARRY OUT, EXERCISE AND COMPLY WITH ANY SUCH ARRANGEMENTS, RIGHTS, PRIVILEGES AND CONCESSIONS.

6. THERE WAS FILED WITH THE BOARD A COPY OF BY-LAW 65 (A BY-LAW RELATING GENERALLY TO THE TRANSACTION OF THE AFFAIRS OF THE APPLICANT) WHICH WAS ADOPTED AT THE 1966 ANNUAL GENERAL MEETING OF THE APPLICANT. ARTICLE 3(A)(1) OF THE BY-LAW READS:

3. MEMBERSHIP:

(A) ELIGIBILITY -

(1) ANY PERSON EMPLOYED BY THE CROWN IN THE RIGHT OF ONTARIO OR BY ANY PUBLIC AUTHORITY OF ONTARIO WHO SIGNS AN APPLICATION FOR MEMBERSHIP IN THE FORM APPROVED BY THE BOARD OF DIRECTORS SHALL BE ELIGIBLE FOR AND SHALL BE ADMITTED TO MEMBERSHIP IN THE ASSOCIATION AT THE DISCRETION OF THE BOARD OF DIRECTORS. ACCEPTANCE OF AN APPLICATION FOR MEMBERSHIP SHALL BE DEEMED TO INDICATE THAT THE PERSON WHOSE APPLICATION IS ACCEPTED IS SUBJECT TO THE BY-LAWS AND REGULATIONS OF THE ASSOCIATION. A MEMBERSHIP CARD SHALL BE FORWARDED TO EACH MEMBER CERTIFYING HIS MEMBERSHIP IN THE ASSOCIATION.

7. AS WELL, THERE WAS FILED WITH THE BOARD AN AFFIDAVIT SWORN BY THE SECRETARY OF THE APPLICANT WITH REGARD TO TWO EXHIBITS, "A" AND "B", WHICH ARE ATTACHED TO THE AFFIDAVIT. ACCORDING TO THE AFFIDAVIT, EXHIBIT "A", WHICH PURPORTS TO BROADEN ARTICLE 3(A) OF BY-LAW 65 TO INCLUDE "ANY PERSON EMPLOYED BY THE CROWN IN THE RIGHT OF ONTARIO OR BY ANY PUBLIC AUTHORITY OR EMPLOYED WITHIN ANY INSTITUTION SITUATE IN THE PROVINCE OF ONTARIO" (UNDERLINING ADDED FOR EMPHASIS), WAS PASSED BY THE BOARD OF DIRECTORS AT A MEETING HELD ON JULY 17TH, 1967. THE AFFIDAVIT FURTHER STATES THAT EXHIBIT "B", WHICH IS A RECOMMENDATION OF ITS ADVISORY COMMITTEE THAT THE APPLICANT "ACCEPT INTO MEMBERSHIP ALL EMPLOYEES OF 'VERSA FOODS' LIMITED EMPLOYED IN QUELPH UNIVERSITY", RATIFIED BY THE BOARD OF DIRECTORS AT THE SAME MEETING.



8. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE AFFIDAVIT AND ATTACHED EXHIBITS CAN HAVE NO RELEVANCE AS THEY WERE ADOPTED OR RATIFIED AFTER JULY 4TH, THE DATE OF THE MAKING OF THE APPLICATION. COUNSEL FURTHER SUBMITS THAT IN ANY EVENT, THE BOARD OF DIRECTORS WERE WITHOUT AUTHORITY TO AMEND BY-LAW No. 65.

9. WE AGREE WITH THE SUBMISSION OF COUNSEL FOR THE RESPONDENT THAT THE RELEVANT DATE FOR PURPOSES OF DETERMINING ALL ISSUES BEFORE THE BOARD IS THE DATE OF THE MAKING OF THE INSTANT APPLICATION. ACCORDINGLY, SINCE THE PURPORTED AMENDMENTS TO ARTICLE 3(A) OF BY-LAW No. 65 WERE MADE AFTER JULY 4TH, THEY CAN IN NO WAY AFFECT ANY DETERMINATIONS MADE BY THE BOARD. FURTHER, HAVING REGARD TO ARTICLE 6(A) OF BY-LAW No. 65 WHICH SETS OUT THE POWERS OF THE BOARD OF DIRECTORS AND ARTICLE 7 OF THE SAME BY-LAW, AND IN PARTICULAR ARTICLE 7(D) WHICH RELATES TO THE AMENDMENTS OF BY-LAWS, IT WOULD APPEAR THAT THE RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS AS SET OUT IN EXHIBIT "A" ATTACHED TO THE AFFIDAVIT AND THE RECOMMENDATIONS RATIFIED BY THE BOARD OF DIRECTORS AS SET OUT IN EXHIBIT "B" ATTACHED TO THE AFFIDAVIT CAN HAVE NO EFFECT UNTIL ADOPTED OR RATIFIED BY THE MEMBERSHIP AT AN ANNUAL OR SPECIAL MEETING OF THE APPLICANT, IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED IN ARTICLE 7 OF BY-LAW No. 65. IN VIEW OF THE FACT THAT THE PURPORTED AMENDMENTS, HOWEVER, WERE MADE AFTER THE DATE OF APPLICATION, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY POSITIVE FINDING REGARDING THE AUTHORITY VESTED IN THE BOARD OF DIRECTORS.

10. IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, BOARD FILE No. 12779-66-R, THE BOARD, AFTER REVIEWING ITS PREVIOUS DECISIONS RELATING TO THE ELIGIBILITY OF EMPLOYEES FOR MEMBERSHIP IN TRADE UNIONS UNDER THE PROVISIONS OF THEIR CONSTITUTIONS, SUMMARIZED THE POSITION OF THE BOARD IN THE FOLLOWING TERMS:

UNQUESTIONABLY IN CONSIDERING THE "ELIGIBILITY" PROBLEM, THE BOARD HAS TAKEN INTO CONSIDERATION THE CONSTITUTION OF THE PARTICULAR UNION IN QUESTION. IT IS ONE OF THE FACTORS WHICH THE BOARD LOOKS AT IN DETERMINING WHETHER A PERSON IS A MEMBER OF THE UNION. THUS, IF THERE IS A CLEAR-CUT PROHIBITION OR EXPRESS EXCLUSION WITH RESPECT TO A CERTAIN CLASS OF PERSONS (SEE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126, ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 170), THE BOARD WILL REFUSE TO CERTIFY AN APPLICANT UNION IF THE CLASS OF PERSONS IN QUESTION IS TO BE INCLUDED IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE REASON FOR THIS IS THAT A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES. TO THAT EXTENT AND FOR THAT PURPOSE, THEN, THE BOARD DOES HAVE REGARD TO UNION CONSTITUTIONS.

ON THE OTHER HAND, THE BOARD HAS ALSO SAID IF THERE IS NO EXPRESS EXCLUSION (CF. ALDERSHOT CONTRACTORS EQUIPMENT RENTALS LIMITED, SUPRA, N. D. APPLIGATE LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, P. 104) OF A PARTICULAR CLASS OR CLASSES OF EMPLOYEES AFFECTED BY THE APPLICATION, IT WILL NOT ENTERTAIN AN OBJECTION TO THE APPLICATION BASED ON THE ELIGIBILITY PROVISIONS OF AN APPLICANT UNION'S CONSTITUTION. IN A CASE OF THIS NATURE, THE BOARD MAY ALSO HAVE REGARD TO THE INTERPRETATION WHICH RESPONSIBLE OFFICIALS OF THE UNION HAVE PLACED ON THE PROVISIONS OF THE CONSTITUTION AND TO THE PRACTICE OF THE UNION WITH RESPECT TO THE ADMISSION OF PERSONS AS MEMBERS. SEE WAYNE PUMP CANADA LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER, 1966, P. 489; JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564.

FURTHERMORE, EVEN WHERE THERE IS AN EXPRESS EXCLUSION IN A UNION CONSTITUTION, IT IS IMPLICIT IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, THAT THE INTERPRETATION PLACED ON THE CONSTITUTION BY THE UNION'S RESPONSIBLE OFFICERS OR PROOF OF UNEQUIVOCAL PAST PRACTICES OF ADMISSION AS MEMBERS OF PERSONS COMING WITHIN THE EXCLUSIONARY CLASS WILL OVERCOME THE LANGUAGE OF THE CONSTITUTION. THERE IS NO DOUBT IN OUR MINDS THAT THIS ACCURATELY REFLECTS BOARD POLICY AND, FURTHER, THAT THE HIGH SCHOOL BOARD OF EASTVIEW CASE IS IN LINE WITH THIS POLICY.

IN SUM, THEN, IN DETERMINING WHETHER AN APPLICANT TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN AN APPROPRIATE BARGAINING UNIT, WHAT THE BOARD IS CONCERNED WITH IS WHETHER THE UNION ACCORDS ALL SUCH EMPLOYEES FULL RIGHTS AND PRIVILEGES AS MEMBERS. IF THE EVIDENCE SUPPORTS THIS CONCLUSION, THEN THE BOARD IS PREPARED TO FIND THAT SUCH EMPLOYEES ARE ELIGIBLE TO BECOME MEMBERS (AND, DEPENDING ON THE EVIDENCE, THAT THEY ARE MEMBERS) FOR THE PURPOSES OF SECTION 7 OF THE ACT AND, FURTHER, THAT THE TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN THE UNIT. WE HASTEN TO ADD, HOWEVER, THAT IF IT SHOULD SUBSEQUENTLY COME TO LIGHT THAT EMPLOYEES IN THE BARGAINING UNIT ARE NOT BEING ACCORDED FULL STATUS AS MEMBERS OF THE UNION, THEN, NATURALLY, THE BOARD WOULD HAVE TO REVIEW ITS DECISION IN THE PARTICULAR CASE AND WOULD BE OBLIGED TO TAKE THIS INTO ACCOUNT IN SUBSEQUENT CASES. HOWEVER, THE POSSIBILITY THAT THIS MAY OCCUR IN THE FUTURE IS NO GROUND, IN OUR VIEW, FOR WITHHOLDING BARGAINING RIGHTS IN ANY PARTICULAR CASE.

11. WE HAVE NO HESITATION IN FINDING THAT THE RESPONDENT DOES NOT FALL WITHIN THE SCOPE OF THE APPLICANT'S MEMBERSHIP ELIGIBILITY PROVISIONS AS SET OUT IN ARTICLE 3(A) OF BY-LAW No. 65. MOREOVER, WE ARE EQUALLY SATISFIED THAT THE RESPONDENT DOES NOT COME WITHIN ANY OF THE OBJECT CLAUSES OF THE SUPPLEMENTARY LETTERS PATENT DATED APRIL 26TH, 1962. IN OUR OPINION, ARTICLE 3(A) OF BY-LAW No. 65 AND THE OBJECTS OF THE APPLICANT DEFINED IN THE SUPPLEMENTARY LETTERS PATENT, READ TOGETHER, ARE TANTAMOUNT TO A PROHIBITION UPON THE APPLICANT FROM TAKING INTO MEMBERSHIP EMPLOYEES OF AN INDEPENDENT CONTRACTOR SUCH AS THE RESPONDENT. MOREOVER, THERE IS NO EVIDENCE OF ANY PAST PRACTICE ON THE PART OF THE APPLICANT OF TAKING SUCH EMPLOYEES INTO MEMBERSHIP.

12. IN THESE CIRCUMSTANCES, AND HAVING REGARD TO THE PRACTICE OF THE BOARD AS SET FORTH IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE (SUPRA), THE BOARD FINDS THAT THE APPLICANT CANNOT ACCEPT INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION AS BARGAINING AGENT IN THE INSTANT APPLICATION.

13. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

13390-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. JOHNS-MANVILLE MINING & TRADING LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND D. ALAN PAGE.

APPEARANCES AT HEARING: LORNE INGLE AND HAROLD DEGURSE FOR THE APPLICANT, G. W. HATELY FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: SEPTEMBER 11, 1967.

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3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT THE RESPONDENT'S MINE IN REEVES TOWNSHIP HAS ENTERED THE DEVELOPMENT STAGE OF ITS OPERATIONS, AND HAVING REGARD TO THE REASONS FOR DECISION IN THE SURLUGA GOLD MINES LIMITED CASE, BOARD FILE No. 13263-67-R, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE DEVELOPMENT STAGE OF ITS MINING OPERATIONS IN REEVES TOWNSHIP IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT BOSS AND FOREMAN, OFFICE AND SALES STAFF AND DEPARTMENT CLERKS, PERSONS EMPLOYED IN THE ENGINEERING AND GEOLOGY DEPARTMENTS, SECURITY GUARDS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. TWO DOCUMENTS WERE FILED IN OPPOSITION TO THIS APPLICATION, WHICH, IF GIVEN EFFECT TO, WOULD REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE. HOWEVER, NO EMPLOYEE ATTENDED THE HEARING TO TESTIFY AS TO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE DOCUMENTS AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.



5. THE RESPONDENT ARGUED THAT THE BOARD SHOULD DIRECT A REPRESENTATION VOTE IN THIS CASE BECAUSE THE EMPLOYEES WOULD NOT LIKELY KNOW THAT THEY HAD TO ADDUCE EVIDENCE CONCERNING THE ORIGINATION AND CIRCULATION OF THEIR PETITIONS. IN ADDITION, IT WAS THE RESPONDENT'S POSITION THAT THE FACT THAT THE EMPLOYEES WERE WORKING IN THE TIMMINS AREA WOULD EFFECTIVELY PREVENT THEIR ATTENDANCE AT THE HEARING HELD IN TORONTO.

6. WHILE THE BOARD WOULD BE SYMPATHETIC WITH THE RESPONDENT'S LATTER ARGUMENT, IF MADE BY THE EMPLOYEES CONCERNED, IT IS NOT WITHOUT INTEREST TO NOTE THAT IN OTHER CASES, EMPLOYEES HAVE APPEARED AT HEARINGS AT TORONTO HAVING TRAVELLED FROM POINTS AS FAR AWAY AS KENORA. IN ADDITION, NO REASON WAS GIVEN BY THE EMPLOYEES FOR THEIR NON-ATTENDANCE IN THIS CASE AND NO REQUEST WAS MADE IN ADVANCE OF THE HEARING BY THE EMPLOYEES TO HAVE THE HEARING HELD IN SOME LOCALITY OTHER THAN TORONTO. WHILE IT HAS NOT BEEN THE BOARD'S PRACTICE TO HOLD HEARINGS IN LOCALITIES OUTSIDE TORONTO IN ORDER TO CONVENIENCE PETITIONERS, IN ANY EVENT, NO SUCH REQUEST WAS MADE IN THIS CASE. NOTHING THEREFORE CAN BE DRAWN FROM THE FACT OF THE NON-ATTENDANCE OF EMPLOYEES AT THE HEARING. THEIR ABSENCE FROM THE HEARING IS EQUALLY CONSISTENT WITH THE FACT THAT THEY MAY HAVE CHANGED THEIR MINDS WITH RESPECT TO THEIR OPPOSITION TO THIS APPLICATION AS WITH ANY OTHER POSSIBLE REASON FOR THEIR NON-APPEARANCE.

7. DEALING NOW WITH THE RESPONDENT'S FIRST ARGUMENT IN FAVOUR OF DIRECTING A REPRESENTATION VOTE, WE WOULD REFER TO SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND PARTICULARLY SUBSECTION 5 THEREOF WHICH READS AS FOLLOWS:

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY EMPLOYEE WHO FAILS TO APPEAR IN PERSON OR BY A REPRESENTATIVE AND ADDUCE EVIDENCE THAT INCLUDES TESTIMONY IN THE PERSONAL KNOWLEDGE AND OBSERVATION OF THE WITNESS AS TO,

- (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE STATEMENT OF DESIRE; AND
- (B) THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED.

8. WHILE THE BOARD ASSUMES EVERYONE TO BE AWARE OF THE PROVISIONS OF THE ACT AND THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD TAKES NO CHANCES IN THIS REGARD. THE BOARD CAUSES A NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING (FORM 5) TO BE PUBLISHED AT THE PLACE OF EMPLOYMENT IN EVERY APPLICATION FOR CERTIFICATION. FORM 5 READS, IN PART, AS FOLLOWS:

ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE.



ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.\*

\*EXPLANATORY NOTE: WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

9. THE BOARD IS OF OPINION THAT THE CAUTION CONTAINED IN ITEM 8 OF FORM 5, AND ESPECIALLY IN THE EXPLANATORY NOTE, IS SUFFICIENT NOTICE TO THE EMPLOYEES THAT THE ATTENDANCE AT THE HEARING OF THEIR WITNESSES WHO CAN TESTIFY CONCERNING THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS IS REQUIRED BEFORE THE BOARD WILL CONSIDER THE STATEMENT OF DESIRE AND TREAT IT AS CASTING DOUBT ON THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT UNION. THE INSTRUCTIONS CONTAINED IN FORM 5 ARE, IN OUR OPINION, PLAIN AND UNAMBIGUOUS AND EXPRESSLY INSTRUCT EMPLOYEES THAT WITNESSES MUST APPEAR AT THE CERTIFICATION HEARING AND TESTIFY CONCERNING THE ORIGINATION OF THE DOCUMENT AND THE MANNER IN WHICH IT CAME TO BE SIGNED. IF EMPLOYEES DO NOT SEE FIT TO FOLLOW THE BOARD'S INSTRUCTIONS, THEY DO SO AT THEIR PERIL. IF THE BOARD WERE TO GIVE EFFECT TO A WRITTEN STATEMENT OF DESIRE SIGNED BY EMPLOYEES WITHOUT HEARING EVIDENCE IN ORDER TO TEST THE VOLUNTARY NATURE OF THE STATEMENT OF DESIRE, THE FACT THAT SUCH PROCEDURE WOULD BE OPEN TO ABUSE IS SO OBVIOUS THAT IT IS NOT NECESSARY TO COMMENT ON IT.

10. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 27TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13403-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. UNIVERSAL COOLER,  
A DIVISION OF SNO-BOY COOLERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES  
(OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE  
AND D. ALAN PAGE.

APPEARANCES AT HEARING: LORNE INGLE AND FRANK BERRY FOR THE  
APPLICANT, S. WALKER AND S. D. BOWMAN FOR THE RESPONDENT, CECIL  
PHILLIPS FOR THE OBJECTORS.

DECISION OF THE BOARD: SEPTEMBER 11, 1967.

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3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE  
PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL  
EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN AND SUPER-  
VISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, AND PERSONS  
COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND  
THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRI-  
ATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT H. OFFTERDINGER,  
A PERSON CLASSIFIED BY THE RESPONDENT AS A DESIGN ENGINEER, AND ROBERT  
GRIFFITHS, A PERSON CLASSIFIED BY THE RESPONDENT AS COST CLERK SUPERVISOR,  
EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE  
ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS  
CLASSIFIED BY THE RESPONDENT AS THE SECRETARY TO THE GENERAL MANAGER, THE  
SECRETARY TO THE PLANT MANAGER, AND THE SECRETARY TO THE CHIEF ACCOUNTANT  
ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR  
RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE NOT IN-  
CLUDED IN THE BARGAINING UNIT.

6. THERE WAS FILED IN THIS MATTER DOCUMENTS IN OPPOSITION TO THIS  
APPLICATION WHICH WERE SIGNED BY A TOTAL OF TWELVE PERSONS, EIGHT OF  
WHOM WERE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.  
OF THE PERSONS IN THE BARGAINING UNIT WHO SIGNED THE PETITION AGAINST THE  
APPLICANT, THE APPLICANT CLAIMED SIX AS MEMBERS. THE FIRST PERSON WHO  
SIGNED THE PETITION ALSO SIGNED A SEPARATE LETTER IN THE FORM OF A  
PETITION BUT WAS NOT CLAIMED AS A MEMBER OF THE APPLICANT. THE SECOND  
PERSON WHO SIGNED THE DOCUMENT WAS ROBERT GRIFFITHS, A SUPERVISOR OF THE  
RESPONDENT, WHOM THE PARTIES AGREE EXERCISED MANAGERIAL FUNCTIONS WITHIN  
THE MEANING OF SECTION 1(3)(B) OF THE ACT. THE THIRD AND TENTH PERSONS  
WHO SIGNED THE DOCUMENT WERE, ACCORDING TO THE AGREEMENT OF THE PARTIES,  
EMPLOYED BY THE RESPONDENT IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING  
TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

THE LAST PERSON WHO SIGNED THE DOCUMENT WAS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT, HOWEVER, HIS CLASSIFICATION IS UNKNOWN TO THE BOARD.

7. IF FULL EFFECT WERE GIVEN TO THESE DOCUMENTS, SUFFICIENT DOUBT WOULD BE CAST ON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT SO THAT THE BOARD WOULD REQUIRE THE PREROGATIVE EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE. HOWEVER, A SUPERVISOR WHO EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT SIGNED THE PETITION PRIOR TO ANY EMPLOYEE WHO WAS CLAIMED BY THE APPLICANT AS A MEMBER. THIS FACT WOULD NECESSARILY COME TO THE ATTENTION OF ALL PERSONS WHO WERE SUBSEQUENTLY REQUESTED TO SIGN THE PETITION. WHEN EMPLOYEES BECAME AWARE THAT THE OPPOSITION TO THE UNION'S APPLICATION HAD THE SUPPORT AND ENCOURAGEMENT OF MANAGEMENT (AS EVIDENCED BY THE SUPERVISOR'S SIGNATURE ON THE PETITION) THIS FACT WOULD LIKELY INFLUENCE THE EMPLOYEES WHO WERE ASKED TO SIGN.

8. IN ADDITION, SINCE A MEMBER OF MANAGEMENT HAD ALREADY SEEN THE PETITION, IT WOULD NOT BE UNREASONABLE FOR THE EMPLOYEES TO ASSUME THAT A MEMBER OF MANAGEMENT WOULD LIKELY SEE THE PETITION AFTER THEY HAD BEEN REQUESTED TO SIGN AND MANAGEMENT WOULD THEREFORE BE MADE AWARE OF THE IDENTITY OF THE PERSONS WHO OPPOSE THE UNION. THESE CIRCUMSTANCES WOULD ALSO LIKELY INFLUENCE THE EMPLOYEES AND WOULD TEND TO DEPRIVE THEM OF THE ABILITY TO VOLUNTARILY EXPRESS THEIR TRUE WISHES.

9. EVEN IF IT WAS ESTABLISHED (AS THE BOARD HAS ASSUMED IN THIS CASE) THAT THE PETITION WAS ORIGINATED COMPLETELY FREE OF ANY UNDUE INFLUENCE OR PARTICIPATION BY MANAGEMENT, WHILE SIGNATURES OBTAINED PRIOR TO THE SIGNATURE OF A MEMBER OF MANAGEMENT WOULD BE GIVEN EFFECT TO, THE BOARD IN PREVIOUS CASES HAS NOT GIVEN EFFECT TO THE SIGNATURE OF ANY EMPLOYEE WHO SIGNED THE PETITION SUBSEQUENT TO A MEMBER OF MANAGEMENT (SEE POCOCK DAIRY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1961, P. 443).

10. THE RESPONDENT ALSO ARGUED THAT BECAUSE SOME OF THE EMPLOYEES WHO WERE EMPLOYED ON THE DATE OF THE MAKING OF THE APPLICATION HAD PREVIOUSLY SERVED NOTICE OF THEIR INTENTION TO TERMINATE THEIR EMPLOYMENT, THEIR NAMES SHOULD NOT BE CONSIDERED IN DETERMINING THE APPLICANT'S MEMBERSHIP POSITION SINCE THEY DID NOT SHARE THE SAME INTERESTS AS EMPLOYEES WHO INTENDED TO REMAIN WITH THE RESPONDENT. APART FROM THE "CANNING INDUSTRY" WHERE DIFFERENT CONSIDERATIONS APPLY, IT HAS NEVER BEEN THE BOARD'S USUAL PRACTICE TO EXCLUDE FROM BARGAINING UNITS SEASONAL EMPLOYEES. SEASONAL EMPLOYEES, PROBATIONARY EMPLOYEES OR EMPLOYEES WHO INTEND TO TERMINATE THEIR EMPLOYMENT ON A FUTURE DATE ARE EMPLOYEES OF THE EMPLOYER FOR THE PURPOSES OF THE ACT. IT IS NOT USUAL FOR EMPLOYEES TO GUARANTEE THEIR TERM OF EMPLOYMENT OR TO BE GIVEN A GUARANTEED TERM OF EMPLOYMENT BY THEIR EMPLOYER. ACCORDINGLY, THE TERM OF EMPLOYMENT IS NOT A VALID CONSIDERATION FOR THE BOARD. THE BOARD DETERMINES THE NUMBER OF "EMPLOYEES" IN THE BARGAINING UNIT "AT THE TIME THE APPLICATION WAS MADE" AS REQUIRED BY SECTION 7(1) OF THE ACT AND IF A PERSON MEETS THE REQUIREMENTS OF THAT TEST AND IS NOT SPECIFICALLY EXCLUDED BY THE OPERATION OF THE ACT OR THE AGREEMENT OF THE PARTIES, THE



PERSON IS ELIGIBLE AND APPROPRIATE FOR INCLUSION IN AN "ALL EMPLOYEE" BARGAINING UNIT WHETHER IT BE A UNIT OF PRODUCTION EMPLOYEES OR A UNIT OF OFFICE, CLERICAL AND TECHNICAL EMPLOYEES AS IN THE INSTANT CASE. WE THEREFORE FIND NO SUBSTANCE TO THE RESPONDENT'S ARGUMENT WITH RESPECT TO THE EMPLOYEES WHO INTEND TO TERMINATE THEIR EMPLOYMENT.

11. SUBSEQUENT TO THE HEARING IN THIS MATTER, THE RESPONDENT BY LETTER DATED AUGUST 3RD, 1967, REQUESTED THE BOARD TO RECONVENE THE HEARING AND THE RESPONDENT RAISED CERTAIN ISSUES AND TOOK THE POSITION THAT "THE RESPONDENT DOES NOT BELIEVE SUFFICIENT CONSIDERATION WAS GIVEN THESE MATTERS AT THE HEARING, AND ACCORDINGLY WOULD ASK THE BOARD FOR RECONSIDERATION".

12. AS INDICATED BY THE RESPONDENT'S STATEMENT AS QUOTED ABOVE, THE BOARD DID, IN FACT, GIVE CONSIDERATION AT THE HEARING (ALBEIT INSUFFICIENT IN THE RESPONDENT'S VIEW) TO ALL THE MATTERS RAISED BY THE RESPONDENT IN ITS LETTER. WHILE IT IS NOT THE BOARD'S USUAL PRACTICE TO ENTERTAIN ADDITIONAL REPRESENTATIONS FROM ONE OF THE PARTIES SUBMITTED SUBSEQUENT TO A HEARING, IF WE TREAT THE RESPONDENT'S LETTER AS A REQUEST TO THE BOARD TO REVIEW THE INSTANT DECISION, WE ARE OF OPINION THAT SINCE ALL THE MATTERS RAISED BY THE RESPONDENT IN ITS REQUEST FOR REVIEW WERE CONSIDERED BY THE BOARD AT THE HEARING AND PRIOR TO THE BOARD REACHING ITS DECISION IN THIS MATTER AND SINCE IT IS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE THE INSTANT DECISION.

13. FOR ALL THE REASONS SET OUT ABOVE AND IN ALL THE CIRCUMSTANCES OF THIS CASE, THE BOARD IS NOT PREPARED TO HOLD THAT THE SIGNATURES OF THE APPLICANT'S MEMBERS, WHICH APPEAR ON THE PETITION SUBSEQUENT TO THE SIGNATURE OF THE RESPONDENT'S SUPERVISOR, CAST DOUBT ON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 28TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13447-67-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. COCA-COLA LTD. (RESPONDENT).



BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER  
AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 7, 1967.

1. APART FROM THE LETTER FROM THE APPLICANT DATED AUGUST 29TH, 1967, WHICH IS HEREINAFTER REFERRED TO, NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 2 OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE PURSUANT TO THE BOARD'S DIRECTION OF AUGUST 15TH, 1967, IN THIS MATTER.

2. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD THE RESULTS OF THE VOTE CAN BE RECORDED AS FOLLOWS:

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS'	
LIST WHO WERE ELIGIBLE TO VOTE	325
NUMBER OF PERSONS WHO CAST BALLOTS	323
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	161
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	159

3. SECTION 7(3) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

IF ON THE TAKING OF A REPRESENTATION VOTE MORE THAN 50 PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE ARE CAST IN FAVOUR OF THE TRADE UNION, - - - THE BOARD SHALL CERTIFY THE TRADE UNION AS THE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT.

THIS SECTION OF THE LABOUR RELATIONS ACT IS MADE APPLICABLE TO PRE-HEARING REPRESENTATION VOTES BY OPERATION OF SECTION 8(4) OF THE ACT WHICH READS, IN PART, AS FOLLOWS:

- - -, THE REPRESENTATION VOTE TAKEN UNDER SUBSECTION 2 HAS THE SAME EFFECT AS A REPRESENTATION VOTE TAKEN UNDER SUBSECTION 2 OF SECTION 7.

4. THE PROVISIONS OF THE ACT WITH RESPECT TO THE TAKING OF REPRESENTATION VOTES, WHETHER PRE-HEARING REPRESENTATION VOTES OR OTHERWISE, REQUIRE THAT THE APPLICANT TRADE UNION, IN ORDER TO BE CERTIFIED FOLLOWING THE TAKING OF A REPRESENTATION VOTE, OBTAIN MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE TO BE CAST IN ITS FAVOUR. IN THE INSTANT CASE, WHILE THE APPLICANT UNION OBTAINED A MAJORITY OF THOSE VOTES WHICH COULD BE COUNTED, THE RESULTS OF THE VOTE AS SET OUT ABOVE CLEARLY INDICATE THAT THE APPLICANT DID NOT OBTAIN A MAJORITY OF THOSE ELIGIBLE TO VOTE. WHILE THE APPLICANT IN ITS LETTER OF AUGUST 29TH, 1967 CRITICIZED THE PROVISIONS OF THE LABOUR RELATIONS ACT WHICH REQUIRE AN APPLICANT UNION TO OBTAIN A MAJORITY OF THOSE ELIGIBLE TO

VOTE, THIS BOARD MUST ADMINISTER THE LABOUR RELATIONS ACT AS IT STANDS AND IS NOT PERMITTED TO WAIVE ANY OF THE PROVISIONS OF THE ACT ESPECIALLY WHERE SUCH PROVISIONS ARE CLEAR AND UNAMBIGUOUS.

5. ACCORDINGLY, THE BOARD FINDS THAT ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

6. THE APPLICATION IS THEREFORE DISMISSED.

7. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

8. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

13481-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 527 (APPLICANT) v. CORNWALL GRAVEL COMPANY LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

APPEARANCES AT HEARING: F. MANONI AND W.G. BLAIR FOR THE APPLICANT, G.G. SMITH FOR THE RESPONDENT, H. A. HERRON AND A. LAROCQUE FOR THE INTERVENER.

DECISION OF THE BOARD:

SEPTEMBER 18, 1967.

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3. IN LIGHT OF THE INFORMATION PROVIDED BY THE PARTIES TO THE EXAMINER APPOINTED IN THIS MATTER CONCERNING THE OPERATIONS OF THE RESPONDENT, OTHER THAN ITS CONSTRUCTION ACTIVITIES, AND HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS YARDS IN THE CITY OF CORNWALL AND AT ITS QUARRY AND ASPHALT PLANT IN THE TOWNSHIP OF CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT AS OF AUGUST 4TH, THE DATE OF THE MAKING OF THE INSTANT APPLICATION, THERE WERE TWELVE PERSONS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN WORK OTHER THAN THE RESPONDENT'S CONSTRUCTION OPERATIONS, WHO ARE INCLUDED IN THE ABOVE DESCRIBED BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF FIVE PERSONS WHOSE NAMES CORRESPOND WITH THOSE APPEARING ON THE LIST OF TWELVE INCLUDED IN THE UNIT FOR PURPOSES OF THE COUNT.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 15TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

13483-67-R: NURSES' ASSOCIATION ST. JOSEPH'S GENERAL HOSPITAL (APPLICANT)  
V. ST. JOSEPH'S GENERAL HOSPITAL, BLIND RIVER (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
P. J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT HEARING: D.F.O. HERSEY, MRS. ALINE CHARRON, L.B. SHARPE  
APPEARING FOR THE APPLICANT AND LLOYD S. VALIN APPEARING FOR THE  
RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 21, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE APPLICANT, NOT HAVING PREVIOUSLY MADE AN APPLICATION FOR CERTIFICATION, THE BOARD ACCORDINGLY CALLED UPON IT TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. FROM THE EVIDENCE GIVEN AT THE HEARING AND THE EXHIBITS FILED IN SUPPORT THEREOF, THE APPLICANT HAS SATISFIED THE USUAL REQUIREMENTS OF THE BOARD IN ESTABLISHING ITS STATUS AS A TRADE UNION AND THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT RAISED A PRELIMINARY OBJECTION AT THE HEARING ALLEGING THAT THE PARTIES WERE COVERED BY A PREVIOUS COLLECTIVE AGREEMENT STILL IN EXISTENCE AND BINDING ON THE PARTIES AT THE TIME OF THE APPLICATION. HENCE, THE APPLICANT WAS ESTOPPED FROM BRINGING ON AN APPLICATION FOR CERTIFICATION AT THIS TIME AND THE APPLICATION WAS PREMATURE. IN SUPPORT OF THE RESPONDENT'S CONTENTION, THE RESPONDENT FILED WITH THE BOARD A COPY OF A LETTER DATED DECEMBER 23RD, 1966, ADDRESSED TO MR. L. SHARPE OF THE REGISTERED NURSES ASSOCIATION OF



ONTARIO, A COPY OF AN UNDATED DOCUMENT ENTITLED "PERSONNEL POLICIES FOR REGISTERED NURSES, ST. JOSEPH'S GENERAL HOSPITAL, BLIND RIVER" (HEREIN AFTER REFERRED TO AS "THE AGREEMENT") AND A COPY OF A LETTER DATED APRIL 6TH, 1967, ADDRESSED TO THE RESPONDENT UNDER THE SIGNATURE OF MRS. CHARRON AS PRESIDENT OF THE APPLICANT. IT WAS ADMITTED BY THE PARTIES THAT THE SAID AGREEMENT REFERRED TO ABOVE WAS THE COLLECTIVE AGREEMENT ALLEGED BY THE RESPONDENT TO BE BINDING IN THIS MATTER.

5. COUNSEL FOR THE RESPONDENT ALLEGED THAT STEMMING FROM HIS LETTER OF DECEMBER 23RD, 1966 THERE WERE A NUMBER OF MEETINGS BETWEEN THE PARTIES RESULTING IN AN AGREEMENT WHICH WAS ACCEPTED BY THE APPLICANT BY ITS LETTER OF APRIL 6TH, 1967. COUNSEL ARGUED THAT "THE AGREEMENT" WAS A COLLECTIVE AGREEMENT FOR THE REGULATION OF TERMS AND CONDITIONS OF EMPLOYMENT AND FELL WITHIN THE MEANING OF THE DEFINITION OF A COLLECTIVE AGREEMENT CONTAINED IN SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE APPLICANT DENIED ANY INTENTION ON THE PART OF THE ASSOCIATION TO BARGAIN COLLECTIVELY AND STATED THAT THEIR ACCEPTANCE WAS ONLY SO FAR AS "PERSONNEL POLICIES" AS SUCH AND WAS NOT INTENDED TO BE A CONTRACT AS THE PARTIES WERE NOT LOOKING TO THE LABOUR RELATIONS ACT IN ANY WAY.

6. THE COMMONLY ACCEPTED VIEW IS THAT A COLLECTIVE AGREEMENT IS INTENDED TO SETTLE THE TERMS AND CONDITIONS OF EMPLOYMENT THAT ARE TO PREVAIL DURING ITS LIFETIME AND TO GOVERN THE COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE PARTIES TO IT. IN ORDER, HOWEVER, TO ESTABLISH THAT AN AGREEMENT MADE BETWEEN THE PARTIES IS A BAR TO AN APPLICATION FOR CERTIFICATION, THE PROPONENT MUST SHOW THAT THE AGREEMENT IS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT. IT HAS BEEN HELD BY THIS BOARD IN THE CANADA MACHINERY CORPORATION CASE, 61, CLLC P. 918; CLS, 76-729 THAT "A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT MEANS AN AGREEMENT IN WRITING EXECUTED OR SIGNED BY THE PARTIES TO THE AGREEMENT". THE BOARD HAS ALSO HELD THE VIEW THAT A COLLECTIVE AGREEMENT NEED NOT NECESSARILY BE A FORMAL AGREEMENT BUT MIGHT UNDER SOME CIRCUMSTANCES BE FOUND IN AN EXCHANGE OF CORRESPONDENCE BETWEEN THE PARTIES. (FOUNDATION OF CANADA COMPANY CASE, 1957, CLS, 76-555.)

7. IN THE INSTANT CASE, THE "AGREEMENT" IS NOT SIGNED BY THE PARTIES. THE LETTER OF DECEMBER 23RD, 1966 SETS OUT ALTERNATE WAYS IN WHICH THE PARTIES MIGHT MAKE SOME ARRANGEMENTS TO REGULATE EMPLOYMENT POLICIES. THE LETTER OF APRIL 6TH, 1967, MERELY ACCEPTS "PERSONNEL POLICIES AS PRESENTLY DRAFTED FOR THE YEAR 1967". IT IS CLEAR THAT THIS EXCHANGE OF CORRESPONDENCE DOES NOT CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT.

8. HAVING REGARD, THEREFORE, TO THE BOARD'S DECISION IN THE CANADA MACHINERY CORPORATION CASE, (SUPRA), THE BOARD FINDS THAT THE DOCUMENT ENTITLED "PERSONNEL POLICIES FOR REGISTERED NURSES, ST. JOSEPH'S GENERAL HOSPITAL, BLIND RIVER," IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT AND, THEREFORE, THE APPLICANT IS NOT ESTOPPED FROM BRINGING ON AN APPLICATION FOR CERTIFICATION.



9. Mr. R. A. WOOLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY, TO EXAMINE THE DUTIES AND RESPONSIBILITIES OF THE FOLLOWING EMPLOYEES, NAMELY, MRS. CATHERINE CIOTKA, MRS. IRNE FALLU, MRS. FALANGE NYMAN, MRS. MARJORIE OATMAN, MRS. JOANNE PROVENCHER, MRS. ALIC ST. ELOP, MRS. JEAN SULLIVAN, AND MRS. JEANNINE GOODMURPHY.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

13486-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
(APPLICANT) V. HOWARD S CLARK (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND H. F. IRWIN.

DECISION OF THE BOARD: SEPTEMBER 5, 1967.

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3. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF FRONTENAC, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING TWO NAMES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. OF THE TWO NAMES, ONE APPEARS ON SCHEDULE A AND ONE ON SCHEDULE C. THE APPLICANT CHALLENGED THE LIST OF EMPLOYEES FILED BY THE RESPONDENT ALLEGING THAT M. STROKAN, WHOSE NAME APPEARS ON SCHEDULE C, WAS AT WORK ON AUGUST 8TH, THE DATE OF THE MAKING OF THE APPLICATION AND, THEREFORE, HE SHOULD BE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. AN EXAMINER ACCORDINGLY WAS APPOINTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

5. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED AUGUST 22ND, 1967, IN THIS MATTER.

6. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT M. STROKAN WAS WORKING FOR THE RESPONDENT ON THE DATE OF APPLICATION AND THEREFORE HE IS INCLUDED ON THE LIST OF EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT.

7. IN SUPPORT OF ITS APPLICATION FOR CERTIFICATION THE APPLICANT FILED TWO COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE. ONE OF THE COMBINATION APPLICATIONS IS DATED JULY 18TH, 1967 AND THE OTHER OCTOBER 23RD, 1966. WITH RESPECT TO THE LATTER COMBINATION APPLICATION THERE IS NO DOCUMENTARY EVIDENCE BEFORE THE BOARD INDICATING THAT THE EMPLOYEE ON WHOSE BEHALF THE APPLICATION WAS SUBMITTED HAS MADE ANY FURTHER PAYMENTS OR DONE ANY ACT WHICH COULD BE TAKEN AS CONFIRMATORY EVIDENCE OF HIS DESIRES WITH RESPECT TO MEMBERSHIP IN THE APPLICANT.
8. WHEN EVIDENCE OF MEMBERSHIP IS NOT MORE THAN SIX MONTHS OLD, CALCULATED FROM THE DATE OF APPLICATION, IT IS NORMALLY CONSIDERED SUFFICIENT TO WARRANT OUTRIGHT CERTIFICATION. IF, HOWEVER, THE EVIDENCE OF MEMBERSHIP IS LESS THAN A YEAR BUT MORE THAN SIX MONTHS OLD, IT IS ONLY CONSIDERED BY THE BOARD TO BE SUFFICIENT TO WARRANT THE DIRECTING OF A REPRESENTATION VOTE (SEE BRUINSMA AND SONS LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY 1963, P. 223). THIS IS THE SITUATION THAT EXISTS WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP DATED OCTOBER 23RD, 1966 SUBMITTED BY THE APPLICANT ON BEHALF OF ONE OF THE TWO PERSONS INCLUDED IN THE BARGAINING UNIT.
9. THERE WAS ALSO FILED WITH THE BOARD TWO STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION. THE APPLICANT ON THE BASIS OF THE EVIDENCE OF MEMBERSHIP WHICH IT HAS SUBMITTED HAS ONLY ESTABLISHED ITS ENTITLEMENT TO THE TAKING OF A REPRESENTATION VOTE. EVEN IF THE BOARD WERE TO FIND THAT THE TWO DOCUMENTS CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, THE APPLICANT WOULD STILL BE ENTITLED TO THE TAKING OF A REPRESENTATION VOTE. IN THESE CIRCUMSTANCES, IT IS NOT NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGINATION OF THE DOCUMENTS FILED IN OPPOSITION TO THE INSTANT APPLICATION.
10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 15TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
11. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVE THROUGH THE APPLICANT.
13. THE MATTER IS REFERRED TO THE REGISTRAR.

13498-67-R: CANADIAN MARITIME UNION (CLC) (APPLICANT) V. UNDERWATER GAS DEVELOPERS LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
O. HODGES, AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: JAMES TODD, W. GONYOU FOR THE APPLICANT,  
W. G. GRAY, Q.C., H. L. MCLEOD FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 18, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. SINCE THE APPLICANT HAD NEVER PREVIOUSLY BEEN RECOGNIZED AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT, THE REGISTRAR, IN ORDER TO AVOID UNDUE DELAY IN THE MATTER, ADVISED THE APPLICANT BY LETTER DATED AUGUST 11TH, 1967 THAT "YOU MUST BE PREPARED AT THE HEARING SCHEDULED IN THIS MATTER TO SATISFY THE BOARD IN ACCORDANCE WITH ITS USUAL PRACTICE THAT YOUR ORGANIZATION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT."

3. PRIOR TO THE HEARING, THE APPLICANT FILED WITH THE REGISTRAR OF THE BOARD CERTAIN DOCUMENTS PURPORTING TO BE THREE CERTIFICATES OF CERTIFICATION ISSUED TO IT BY THE CANADA LABOUR RELATIONS BOARD, A CERTIFICATE OF AFFILIATION TO THE ONTARIO FEDERATION OF LABOUR AND A COPY OF THE CONSTITUTION OF THE APPLICANT. MR. TODD, APPEARING FOR THE APPLICANT, REFERRED IN HIS REPRESENTATIONS TO THE MATERIAL FILED WITH THE BOARD. NO PERSON, HOWEVER, GAVE TESTIMONY AT THE HEARING WITH RESPECT TO EVIDENCE RELATING TO THE PROOF OF STATUS REQUIRED BY THE BOARD. FOLLOWING THE HEARING, THE APPLICANT FILED THROUGH ITS SOLICITORS, A DOCUMENT WHICH PURPORTED TO BE A PHOTO COPY OF THE MINUTES OF THE FOUNDING CONVENTION OF THE UNION, DATED OCTOBER 12TH, 1961.

4. PARTIES TO A HEARING BEFORE THIS BOARD ARE DEEMED TO BE AWARE OF THE PRACTICE AND PROCEDURES OF THE BOARD AND SHOULD, THEREFORE, BE READY TO DEAL WITH ALL OF THE ISSUES AT THE HEARING. IN THIS CASE THE APPLICANT HAD SUFFICIENT NOTICE OF THE BOARD'S REQUIREMENT THAT IT MUST BE PREPARED TO PROVE ITS STATUS BEFORE THE BOARD AT THE HEARING AND IT IS INCUMBENT ON THE APPLICANT TO PROVIDE SUCH EVIDENCE AS MAY BE NECESSARY TO SATISFY THE BOARD THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. FOR REFERENCE SEE BLUE BELL CANADA CASE, O.L.R.B., MONTHLY REPORT, FEBRUARY, 1966, P. 809.

5. IT SHOULD BE NOTED THAT THE TYPE OF EVIDENCE ACCEPTED BY SIMILAR BOARDS IN OTHER JURISDICTIONS IN REGARD TO THE PROOF OF STATUS BY APPLICANTS APPEARING BEFORE THEM IN CERTIFICATION PROCEEDINGS, MAY NOT MEET THE REQUIREMENTS OF THIS BOARD AND ALSO THE RECOGNITION OF STATUS BY SUCH OTHER BOARDS IS NOT IN ITSELF SUFFICIENT EVIDENCE PER SE TO PROVE STATUS OF AN APPLICANT BEFORE THIS BOARD. IT SHOULD FURTHER BE NOTED THAT IN ORDER FOR WEIGHT TO BE GIVEN TO ANY DOCUMENTS PRESENTED TO THE BOARD AS EVIDENCE, AN APPLICANT SHOULD BE PREPARED TO PROPERLY IDENTIFY AND PROVE SUCH DOCUMENTS AT THE HEARING.



6. THE BOARD USUALLY REQUIRES AND OBTAINS ORAL TESTIMONY OF OFFICIALS OF THE APPLICANT OR SOME OTHER PERSON WHO HAS PERSONAL KNOWLEDGE OF THE FACTS CONCERNING THE FORMATION OF THE APPLICANT INCLUDING, INTER ALIA, EVIDENCE OF THE APPLICANT'S CONSTITUTION, THE OBJECTIVES, AND PURPOSES OF THE ORGANIZATION, THE ELECTION OF OFFICERS, EVIDENCE OF QUALIFICATIONS NECESSARY FOR MEMBERSHIP IN THE ORGANIZATION AND ANY OTHER MATTERS THAT MAY BE RELEVANT TO BRING THE APPLICANT WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THIS IS NOT, HOWEVER, TO SUGGEST THAT ORAL EVIDENCE IS THE ONLY METHOD OF PROVING STATUS IN EVERY CASE BEFORE THIS BOARD. THE "BEST EVIDENCE RULE" SHOULD GENERALLY PREVAIL. EACH CASE, HOWEVER, MUST STAND ON ITS OWN MERITS AND THE ONUS IS UPON THE APPLICANT TO PROVIDE THE BOARD WITH SUFFICIENT, ACCEPTABLE EVIDENCE ON WHICH IT CAN PROPERLY MAKE A FINDING.

7. IN THE INSTANT CASE, THE APPLICANT FAILED TO PRESENT SUFFICIENT EVIDENCE TO MEET THE BOARD'S REQUIREMENTS AT THE HEARING. THE BOARD, THEREFORE, FINDS THAT CANADIAN MARITIME UNION (CLC) DID NOT ESTABLISH THAT IT WAS ENTITLED TO STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

8. THE APPLICATION IS ACCORDINGLY DISMISSED.

13523-67-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. AFL-CIO-CLC (APPLICANT) V. MALETTE LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: A. LALONDE AND R. BRIXHE FOR THE APPLICANT, R. D. PERKINS AND G. MALETTE FOR THE RESPONDENT, JEAN GUY DEMERS AND LEON MAURICE HARVEY FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE:

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS SAWMILL AND PLANING MILL OPERATIONS IN THE TOWNSHIP OF MASSEY, IN THE DISTRICT OF COCHRANE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THERE WAS FILED IN THIS MATTER A DOCUMENT IN OPPOSITION TO THE APPLICATION CONTAINING THE NAMES OF 27 EMPLOYEES IN THE BARGAINING UNIT AND THE APPLICANT CLAIMED 18 OF THESE PERSONS AS MEMBERS. MR. L. M. HARVEY AND MR. J. G. DEMERS APPEARED AT THE HEARING AND TESTIFIED IN



SUPPORT OF THE PETITION. IN ORDER TO OBTAIN ALL OF MR. HARVEY'S EVIDENCE IT WAS NECESSARY FOR THE BOARD TO EXAMINE MR. HARVEY IN CONSIDERABLE DETAIL BECAUSE HIS ANSWERS TO QUESTIONS WERE NOT AS EXPLICIT AS THEY COULD HAVE BEEN. HOWEVER, THE DETAILS WHICH THE BOARD WAS FINALLY ABLE TO OBTAIN FROM MR. HARVEY CONCERNING THE MANNER IN WHICH THE DOCUMENT WAS ORIGINATED BY HIM AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED WAS SUBSEQUENTLY SUBSTANTIATED BY EVIDENCE CALLED BY THE APPLICANT UNION. WHILE MR. HARVEY'S EVIDENCE COULD HAVE BEEN MORE FORTHRIGHT, WE CANNOT CHARACTERIZE HIS EVIDENCE AS EVASIVE.

4. HAVING REGARD TO THE Demeanour OF MR. HARVEY IN THE WITNESS BOX AND HAVING HAD AN OPPORTUNITY TO ASSESS HIS CREDIBILITY, WE FIND THAT MR. HARVEY'S EVIDENCE IS WORTHY OF BELIEF. THERE WAS NOTHING IN MR. HARVEY'S EVIDENCE WHICH WOULD INDICATE THAT THE RESPONDENT COMPANY HAD A HAND IN THE MANNER IN WHICH THE DOCUMENT ORIGINATED NOR IS THERE ANYTHING IN MR. HARVEY'S EVIDENCE TO SUGGEST THAT THE EMPLOYEES WHO WERE CLAIMED BY THE UNION AS MEMBERS WERE INFLUENCED BY ANYTHING WHICH THE RESPONDENT DID. IT IS TO BE NOTED THAT WHILE THIS APPLICATION WAS MADE ON AUGUST 16TH, 1967, THE PETITION WAS CIRCULATED AND ALL THE SIGNATURES WERE OBTAINED ON AUGUST 14TH, 1967, TWO DAYS PRIOR TO THE APPLICATION BEING MADE AND PRIOR TO THE NOTICE TO EMPLOYEES OF THE APPLICATION FOR CERTIFICATION (FORM 5) WHICH WAS SENT TO THE RESPONDENT FOR POSTING ON AUGUST 18TH, 1967.

5. MR. DEMERS ALSO TESTIFIED CONCERNING THE PETITION. MR. DEMERS TESTIFIED THAT HE HAD NO KNOWLEDGE CONCERNING HOW THE DOCUMENT ORIGINATED AND THE ONLY SIGNATURE THAT HE COULD IDENTIFY WAS HIS OWN. MR. DEMERS WAS NOT PRESENT WHEN ANY OF THE OTHER SIGNATURES WERE OBTAINED. HOWEVER, MR. DEMERS DID TESTIFY THAT APPROXIMATELY ONE WEEK PRIOR TO AUGUST 14TH HE APPROACHED TWO OFFICIALS OF THE RESPONDENT COMPANY AND MADE INQUIRIES OF THEM CONCERNING THEIR OPINIONS AS TO WHAT EFFECT THE UNION WOULD HAVE ON THE EMPLOYEES IF THE UNION SUCCEEDED IN OBTAINING CERTIFICATION. MR. DEMERS WAS INFORMED THAT THE COMPANY OFFICIALS BELIEVED THE UNION'S DEMANDS WERE EXCESSIVE AND THAT THE COMPANY COULD NOT AFFORD TO MEET THEM. IT WAS ALSO POINTED OUT THAT THE CHARGES MADE TO THE EMPLOYEES BY THE COMPANY FOR ROOM AND BOARD HAD RECENTLY BEEN REDUCED. THE COMPANY OFFICIALS STATED FURTHER THAT IF THE UNION CAME INTO THE MILL OVERTIME WOULD LIKELY BE REDUCED AND THE WORK WEEK WOULD BE CUT TO 40 HOURS. THE OFFICIALS FURTHER ADVISED THAT ANY TIME MR. DEMERS REQUIRED A RAISE IN PAY ALL HE HAD TO DO WAS TO ASK FOR IT AND THE COMPANY WOULD GIVE HIM A RAISE IF THEY WERE ABLE TO DO SO. APPARENTLY, MR. DEMERS HAD OBTAINED A RAISE OF PAY APPROXIMATELY ONE MONTH PRIOR TO THIS CONVERSATION. NO MENTION OF A PETITION WAS MADE DURING THE COURSE OF THE CONVERSATION BETWEEN THE COMPANY OFFICIALS AND MR. DEMERS.

6. IF IT HAD BEEN ESTABLISHED THAT MR. DEMERS WAS THE MOVING FORCE BEHIND THE PETITION, WHICH WAS ORIGINATED BY MR. HARVEY, OR THAT THE INFORMATION OBTAINED BY MR. DEMERS FROM THE COMPANY OFFICIALS HAD BEEN COMMUNICATED TO THE OTHER EMPLOYEES, IT MAY WELL BE THAT THE BOARD WOULD FIND THAT THE CONVERSATION WITH THE MEMBERS OF MANAGEMENT HAD INFLUENCED

MR. DEMERS AND THEREFORE THE BOARD MIGHT REFUSE TO GIVE EFFECT TO THE PETITION. HOWEVER, THERE WAS NO EVIDENCE THAT MR. DEMERS CONVEYED THE INFORMATION FROM THE COMPANY OFFICIALS TO ANY OF THE OTHER EMPLOYEES IN THE BARGAINING UNIT NOR IS THERE ANY EVIDENCE THAT THIS PETITION WAS ORIGINATED AS A RESULT OF THE CONVERSATION REPORTED ABOVE. IT IS NOT WITHOUT INTEREST TO NOTE THAT WHILE THE APPLICANT ARGUED THAT THE BOARD SHOULD NOT GIVE EFFECT TO THE PETITION BECAUSE OF THE FACT THERE WAS NO EVIDENCE THAT THE COMPANY ACTIVELY ATTEMPTED TO PROHIBIT THE CIRCULATION OF THE DOCUMENT, COUNSEL FOR THE APPLICANT ACKNOWLEDGED THAT THERE WAS "NOTHING IN THE TESTIMONY LINKING MANAGEMENT DIRECTLY TO THE PETITION".

7. WHILE THE BOARD MIGHT HAVE CERTAIN SUSPICIONS CONCERNING THE PETITION, THERE IS NO EVIDENCE BEFORE US WHICH WOULD INDICATE THAT MANAGEMENT KNEW OF THE CIRCULATION OF THE DOCUMENT OR WAS IN ANY WAY CONNECTED WITH ITS ORIGINATION.

8. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE ARE SATISFIED THAT THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 28TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER:      SEPTEMBER 11, 1967.

I DISSENT.

HAVING ASSESSED THE CREDIBILITY OF MR. HARVEY, AS EVIDENCED BY THE MANNER IN WHICH HE TESTIFIED, I WOULD NOT ACCEPT MR. HARVEY'S EVIDENCE CONCERNING THE ORIGINATION OF THE PETITION. HAVING REGARD TO THE EVIDENCE OF MR. DEMERS CONCERNING HIS CONVERSATION WITH THE EMPLOYER AND THE FACT THAT MR. DEMERS APPEARED AS A REPRESENTATIVE OF THE OBJECTORS AT THE HEARING IN THIS MATTER, I WOULD INFER THAT THE RESPONDENT INFLUENCED THE EMPLOYEES THROUGH MR. DEMERS AND THAT THEREFORE THE PETITION DOES NOT TRULY REPRESENT THE WISHES OF THE EMPLOYEES. I WOULD THEREFORE NOT GIVE EFFECT TO THE PETITION BUT WOULD HAVE CERTIFIED THE APPLICANT WITHOUT TAKING A REPRESENTATION VOTE IN THIS CASE.

13543-67-R: DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA, AFL-CIO (APPLICANT) V. BARTON DISTILLING (CANADA) LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: HOWARD J. SIMPSON FOR THE APPLICANT  
AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 18, 1967.

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4. THE ISSUE BEFORE THE BOARD CONCERNS THE EVIDENCE PRESENTED TO THE BOARD BY THE APPLICANT IN SUPPORT OF ITS APPLICATION. THE APPLICANT FILED TEN APPLICATION CARDS BEARING ORIGINAL SIGNATURES, PROPERLY DATED AND A SEPARATE RECEIPT FORM ATTACHED TO EACH CARD. EACH RECEIPT WAS SIGNED BY MR. HOWARD SIMPSON, AS COLLECTOR INDICATING THE SUM OF \$2.00 HAD BEEN PAID IN EACH CASE AND A FEW RECEIPTS SEEMED TO HAVE BEEN COUNTERSIGNED.

5. ON AUGUST 23RD, 1967, THE APPLICANT FILED WITH THE BOARD, AS REQUIRED BY ITS RULES OF PROCEDURE, A FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS. PARAGRAPH THREE OF THE FORM PROVIDES:

"3.(WHERE THE DOCUMENTARY EVIDENCE CONSISTS IN PART OF RECEIPTS OR OTHER ACKNOWLEDGEMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES). ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGEMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT



OR AN ACKNOWLEDGEMENT OF PAYMENT IS  
SUBMITTED HAS PERSONALLY PAID IN MONEY  
THE AMOUNT SHOWN THEREON ON HIS OWN  
BEHALF TO THE PERSON WHOSE NAME APPEARS  
ON HIS RECEIPT OR ACKNOWLEDGEMENT OF  
PAYMENT AS COLLECTOR,  
EXCEPT IN THE FOLLOWING INSTANCES:"

THE WORDS "EXCEPT IN THE FOLLOWING INSTANCES" WERE CROSSED OUT ON THE  
FORM SUBMITTED, WHICH WAS SIGNED BY MORT BRANDENBURG, GENERAL PRESIDENT  
OF THE APPLICANT UNION. HAVING REGARD TO THE WORDING OF THIS DOCUMENT  
AND TO THE CARDS AND RECEIPTS FILED WITH THE BOARD, IT WOULD APPEAR  
THAT EACH PERSON WHO SIGNED A CARD PAID THE SUM OF \$2.00 TO MR. HOWARD  
SIMPSON AS COLLECTOR ON THE DATES NOTED ON THE RECEIPTS.

6. UPON BEING ADVISED BY THE BOARD AT THE HEARING THAT IT APPEARED  
THAT ONLY FOUR OF THE RECEIPTS HAD BEEN COUNTER-SIGNED, MR. SIMPSON,  
ADMITTED TO THE BOARD THAT HE HAD NOT IN FACT COLLECTED THE MONEY FROM  
EACH PERSON WHO SIGNED A CARD AND STATED SOME OF THE MONIES HAD BEEN  
COLLECTED BY MR. NICK LAUER. THERE WAS NO EVIDENCE OFFERED TO THE  
BOARD IN RESPECT TO THIS FACT.

7. IT HAS OFTEN BEEN POINTED OUT THAT THE BOARD CANNOT INTERVIEW  
EACH AND EVERY EMPLOYEE IN RESPECT TO WHOM EVIDENCE OF MEMBERSHIP IS  
FILED IN CERTIFICATION PROCEEDINGS. THE BOARD MUST RELY ALMOST  
COMPLETELY ON DOCUMENTARY EVIDENCE RELATING TO UNION MEMBERSHIP WHICH  
IS NOT BY ITS NATURE SUBJECT TO EXAMINATION BY THE PARTIES TO THE  
PROCEEDINGS. (SECTION 83(1) OF THE LABOUR RELATIONS ACT). THERE IS,  
THEREFORE, A HEAVY ONUS PLACED UPON THOSE WHO SUBMIT SUCH EVIDENCE TO  
MAKE FULL DISCLOSURE OF ALL THE MATERIAL FACTS AND NOT TO MISLEAD THE  
BOARD IN ANY WAY. THE PRINCIPLES RELATING TO THESE MATTERS HAVE BEEN  
DEALT WITH IN MANY PREVIOUS DECISIONS OF THE BOARD, THE MOST RECENT  
BEING, THE COLLINGWOOD SHIPYARDS CASE, O.L.R.B., MONTHLY REPORT, JUNE,  
1967, AT PAGE 246. IN THAT DECISION, THE BOARD HAD THIS TO SAY AT  
PAGE 253:

"THE IMPORTANCE OF THE WRITTEN ASSURANCES  
CONTAINED IN THE PRESENT FORM 8 IS REFLECTED  
IN THE CONSEQUENCE OF A FAILURE TO FILE THE  
FORM. WHILE THE BOARD HAS NOT REQUIRED STRICT  
COMPLIANCE WITH SECTION 6 OF ITS RULES AS TO THE  
TIME FOR FILING A FORM 8 AND HAS IN PRACTICE  
ACCEPTED THEM IF FILED AT THE HEARING. IF NONE  
IS IN FACT FILED, THIS WILL RESULT IN THE  
DISMISSAL OF THE APPLICATION. REFERENCE IS  
MADE TO ESSEX WIRE CORPORATION LIMITED, SUPRA.  
AS THE BOARD POINTED OUT IN THAT CASE, THE  
INFORMATION CONTAINED IN THE FORM GOES TO THE  
ROOT OF THE MEMBERSHIP EVIDENCE FILED BY AN  
APPLICANT."



AND

"THE PERSON COMPLETING THE FORM HAS A DUTY TO INFORM HIMSELF OF THE FACTS SO AS TO BE SATISFIED THAT THERE ARE NO IRREGULARITIES WHICH OUGHT TO BE DISCLOSED"

AND FURTHER

"FAILURE ON HIS PART OR ON THE PART OF THOSE PERSONS UNDER HIM RESPONSIBLE FOR DIRECTING THE CAMPAIGN TO MAKE THE NECESSARY INQUIRIES HAS HAD SERIOUS REPERCUSSIONS FOR THE APPLICANT TRADE UNION".

FOR REFERENCE SEE ALSO THE WEBSTER AIR EQUIPMENT CASE, 1958, VOLUME 1 CLLC 18, 110, CLS 76-598 AND THE NATIONAL STEEL CAR CORPORATION CASE, O.L.R.B., MONTHLY REPORT, JUNE, 1966, P. 738.

8. WE DO NOT SUGGEST IN THE INSTANT CASE THAT THERE WAS ANY INTENTIONAL BAD FAITH ON BEHALF OF THE APPLICANT. IT SHOULD BE NOTED, HOWEVER, THAT IT WAS AT THE HEARING THAT THE TRUE FACTS CONCERNING THE EVIDENCE OF MEMBERSHIP SUBMITTED TO THE BOARD BY THE APPLICANT WERE REVEALED. THE GENERAL PRESIDENT OF THE APPLICANT, BY SIGNING FORM 8 AND SUBMITTING IT AS EVIDENCE TO THE BOARD, MUST HAVE EXPECTED THE BOARD TO RELY ON THE INFORMATION CONTAINED IN IT. PARAGRAPH THREE OF THIS FORM IN THIS CASE WAS AT BEST INACCURATE AND COULD, WITHOUT FURTHER INQUIRY, HAVE MISLEAD THE BOARD. WHERE MATERIAL IRREGULARITIES EXIST IN ONE OR MORE OF THE DOCUMENTS PRESENTED IN SUPPORT OF THE APPLICATION IT FOLLOWS THAT THE VERACITY OF ALL OF THE EVIDENCE IS THEN PLACED IN DOUBT.

9. THE BOARD, THEREFORE, FINDS THAT THE PERSON WHO SIGNED EACH RECEIPT, NAMELY, MR. HOWARD SIMPSON, WAS NOT IN FACT THE ACTUAL COLLECTOR OF THE MONIES ALLEGED TO HAVE BEEN PAID BY EACH PERSON NAMED ON EACH RECEIPT. THE BOARD FURTHER FINDS THAT THE INFORMATION CONTAINED IN THE FORM 8, DECLARATION FILED WITH THE BOARD UNDER THE SIGNATURE OF MORT BRANDENBURG, GENERAL PRESIDENT OF THE APPLICANT, WAS SUBSTANTIALLY IN ERROR AS TO FACTS, MATERIAL TO THE APPLICATION. THIS SITUATION CLEARLY FALLS WITHIN THE PRINCIPLES LAID DOWN BY THIS BOARD IN THE PREVIOUS DECISIONS REFERRED TO ABOVE. THE APPLICANT HAS NOT DISCHARGED ITS DUTY TO ENSURE THAT THE EVIDENCE SUBMITTED TO THE BOARD IS TRUE AND ACCURATE, THEREFORE, THE BOARD CANNOT RELY ON ANY OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT.

10. THE APPLICATION IS ACCORDINGLY DISMISSED.

13553-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. INSPIRATION LIMITED (RESPONDENT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: P. E. GUERTIN AND L. OUELLETTE FOR THE  
APPLICANT, S. D. LOUKIDELIS, R. MERTL AND F. BOSSONS FOR THE  
RESPONDENT, NO ONE FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 21, 1967.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. WHILE MAKING THE INSTANT APPLICATION, THE APPLICANT AT THE SAME TIME SUBMITTED THAT IT ALREADY HAS THE BARGAINING RIGHTS FOR THE EMPLOYEES WHO ARE THE SUBJECT OF THE APPLICATION BY VIRTUE OF A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE APPLICANT AND THE RESPONDENT ON JULY 27TH, 1967. THE RESPONDENT, ON THE OTHER HAND, ALLEGED THAT THE COLLECTIVE AGREEMENT, UPON WHICH THE APPLICANT RELIES, IS NOT A VALID AGREEMENT AS THE PERSON WHO SIGNED THE AGREEMENT, PURPORTEDLY ON BEHALF OF THE RESPONDENT, DID NOT, IN FACT, HAVE THE AUTHORITY TO DO SO. THE RESPONDENT ARGUES FURTHER THAT THE APPLICANT WAS NOT ENTITLED TO RELY UPON THE PERSON WHO SIGNED THE AGREEMENT, PURPORTEDLY ON BEHALF OF THE RESPONDENT, AS HAVING THE AUTHORITY TO BIND THE RESPONDENT TO THE AGREEMENT.

5. THE RESPONDENT WHICH HAS ITS HEAD OFFICE IN MONTREAL IS ENGAGED IN MANUFACTURING, MINING AND CONSTRUCTION OPERATIONS. ITS CONSTRUCTION OPERATIONS ARE DIVIDED INTO FOUR DIVISIONS, ONE OF THEM BEING ITS BUILDING DIVISION, THE RESPONSIBILITY FOR WHICH FALLS UNDER THE AMBIT OF ONE OF THE VICE-PRESIDENTS OF THE COMPANY. THE BUILDING DIVISION IN TURN IS DIVIDED INTO GEOGRAPHIC AREAS UNDER THE SUPERVISION OF DISTRICT MANAGERS. THE JURISDICTION OF THE OTTAWA DISTRICT MANAGER ENCOMPASSES THE AREA OF NORTH BAY, THE LOCATION OF THE CONSTRUCTION JOB SITE WHERE THE EMPLOYEES OF THE RESPONDENT, WITH WHOM WE ARE HERE CONCERNED, ARE EMPLOYED. THE OTTAWA OFFICE OF THE RESPONDENT PREPARED THE TENDER FOR THE PROJECT AND THE CONTRACT FOR THE CONSTRUCTION OF A BUILDING ON THE CANADIAN AIR FORCE BASE WAS AWARDED TO THE RESPONDENT BY DEFENCE CONSTRUCTION (1951) LIMITED. THE OTTAWA DISTRICT MANAGER IS IN CHARGE OF THE PROJECT.

6. THE EVIDENCE IS THAT THE RESPONDENT COMMENCED WORK ON THE PROJECT SOME TIME EARLY IN JULY OF THIS YEAR. TONY DAVID, AN EMPLOYEE OF THE RESPONDENT, WAS APPOINTED AS THE BUILDING SUPERINTENDENT. ACCORDING TO THE TESTIMONY OF LEO OUELLETTE, A BUSINESS AGENT FOR THE APPLICANT IN NORTH BAY, DAVID, WHOM HE THOUGHT WAS THE PROJECT MANAGER, HIRED TWO CARPENTERS THROUGH THE APPLICANT UNION. ADDITIONAL CARPENTERS WERE SUBSEQUENTLY HIRED BY DAVID AGAIN THROUGH THE UNION. OUELLETTE TESTIFIED THAT HE INFORMED DAVID AT THE TIME THE ORIGINAL TWO CARPENTERS

WERE HIRED THAT THE WAGE RATE BEING PAID IN THE AREA TO CARPENTERS WAS \$3.30 PER HOUR. OUELLETTE'S EVIDENCE IS, HOWEVER, THAT A FEW DAYS PRIOR TO THE SIGNING OF THE COLLECTIVE AGREEMENT IN DISPUTE HE TOLD DAVID THAT WHILE UNDER THE COLLECTIVE AGREEMENT IN EFFECT WITH THE LOCAL CONTRACTORS, THE WAGE RATE WAS \$3.30 PER HOUR, TWO "OUTSIDE" CONTRACTORS, NAMELY P.R. CONNOLLY CONSTRUCTION LTD. AND BENNETT-PRATT LTD., WHO HAD BEEN DOING WORK IN THE AREA, SIGNED COLLECTIVE AGREEMENTS PAYING A WAGE RATE OF \$3.65 PER HOUR. WHILE IT IS NOT CLEAR FROM THE EVIDENCE JUST WHEN IT WAS DONE, OUELLETTE TESTIFIED THAT HE GAVE TO DAVID A COPY OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND FARQUHAR CONSTRUCTION LIMITED, A LOCAL CONTRACTOR, WHICH PROVIDED FOR THE \$3.30 PER HOUR WAGE RATE.

7. OUELLETTE TESTIFIED THAT ON JULY 26TH HE ATTENDED AT DAVID'S OFFICE ON THE CONSTRUCTION SITE FOR THE PURPOSE OF HAVING THE RESPONDENT ENTER INTO A COLLECTIVE AGREEMENT WITH THE APPLICANT. OUELLETTE'S EVIDENCE IS THAT, WHILE HE WAS IN DAVID'S OFFICE, DAVID RECEIVED A TELEPHONE CALL WHICH ACCORDING TO OUELLETTE HE ASSUMED WAS FROM THE RESPONDENT'S HEAD OFFICE. OUELLETTE'S EVIDENCE IS THAT DURING THE TELEPHONE CONVERSATION DAVID TOLD THE PERSON TO WHOM HE WAS TALKING THAT THE BUSINESS AGENT OF THE UNION WAS IN HIS OFFICE. WE WOULD MENTION HERE THAT DAVID WAS NOT CALLED AS A WITNESS BY THE RESPONDENT, AND THERE IS NO OTHER EVIDENCE BEFORE THE BOARD AS TO WHOM HE WAS SPEAKING. RUDOLF MERTL, THE OTTAWA MANAGER, HOWEVER, TESTIFIED THAT HE WAS ON HOLIDAYS ON OR ABOUT THE DATE IN QUESTION AND HAD NOT MADE ANY TELEPHONE CALL TO DAVID. IN ANY EVENT, OUELLETTE TESTIFIED THAT SUBSEQUENT TO THE TELEPHONE CALL, DAVID AGREED TO SIGN A COLLECTIVE AGREEMENT WITH THE APPLICANT PROVIDED THAT OUELLETTE PRODUCED PROOF THAT OTHER CONTRACTORS HAD SIGNED COLLECTIVE AGREEMENTS WITH THE APPLICANT COVERING THE NORTH BAY AREA. IT IS NOT CLEAR FROM OUELLETTE'S TESTIMONY WHETHER DAVID WAS REFERRING TO CONTRACTORS WHOSE HOME BASE WAS OUTSIDE THE AREA OR LOCAL CONTRACTORS. IT WOULD APPEAR FROM THE EVIDENCE, HOWEVER, THAT DAVID ALREADY HAD A COPY OF THE COLLECTIVE AGREEMENT BETWEEN FARQUHAR CONSTRUCTION LIMITED AND THE APPLICANT.

8. OUELLETTE'S EVIDENCE IS THAT ON THE FOLLOWING DAY, JULY 27TH, HE RETURNED TO DAVID'S OFFICE WITH SEVERAL COPIES OF THE FORM OF COLLECTIVE AGREEMENT ENTERED INTO BY THE APPLICANT AND P. R. CONNOLLY CONSTRUCTION LIMITED AND BENNETT-PRATT LTD. EXCEPT THAT THE COPIES PRODUCED FOR DAVID WERE DATED JULY 28TH, 1967 AND NAMED THE RESPONDENT AS A PARTY TO THE AGREEMENT. WE WOULD MENTION THAT THE DURATION CLAUSE OF THE AGREEMENT PROVIDED THAT IT WAS TO BE EFFECTIVE FROM JANUARY 16TH, 1966 TO APRIL 30TH, 1968. ACCORDING TO OUELLETTE, DAVID EXAMINED THE FORM OF AGREEMENT, WHICH PROVIDED FOR A WAGE RATE OF \$3.65 PER HOUR. HE THEREUPON IMPRINTED "INSPIRATION LTD. N.B. BLDG DIV" WITH A RUBBER STAMP IN THE SPACE BELOW THE WORDS "SIGNED ON BEHALF OF THE CONTRACTOR" ON ALL COPIES OF THE AGREEMENT AND AFFIXED HIS SIGNATURE IMMEDIATELY THEREAFTER. DAVID ALSO ADDED THE WORDS ON EACH COPY "EFFECTIVE JULY 28-1967". THE EVIDENCE OF FREDERICK BOSSONS, THE SECRETARY OF THE RESPONDENT, IS THAT THE RUBBER STAMP IMPRINTED BY DAVID ON THE COPIES OF THE AGREEMENT WAS GENERALLY USED TO STAMP INVOICES AND OTHER DOCUMENTS. THE COMPANY SEAL OF THE RESPONDENT WAS NOT AFFIXED TO THE AGREEMENT.



9. OUELLETTE TESTIFIED THAT ON THAT OCCASION HE DID NOT REFER TO THE DIFFERENT RATES OF PAY SPECIFIED IN THE COLLECTIVE AGREEMENTS WITH THE LOCAL CONTRACTORS AND THE "OUTSIDE" CONTRACTORS. FURTHER HIS EVIDENCE IS THAT HE DID NOT QUESTION DAVID'S AUTHORITY TO SIGN THE AGREEMENT ON BEHALF OF THE RESPONDENT. ACCORDING TO OUELLETTE, HOWEVER, HE FORWARDED ALL COPIES OF THE AGREEMENTS SIGNED BY DAVID TO THE SUDBURY OFFICE OF THE APPLICANT AND THEY WERE SHORTLY RETURNED TO HIM BEARING THE SIGNATURE OF P. E. GUERTIN, THE BUSINESS AGENT OF THE APPLICANT IN SUDBURY. IT APPEARS THAT A COPY OF THE AGREEMENT EXECUTED BY BOTH DAVID AND GUERTIN WAS GIVEN TO THE RESPONDENT. IT IS NOT CLEAR FROM THE EVIDENCE WHETHER THIS WAS DONE THROUGH DAVID OR IN SOME OTHER MANNER.

10. ON AUGUST 2ND, 1967, A REGISTERED LETTER WAS SENT TO GUERTIN SIGNED BY H. T. HERBERT, THE VICE-PRESIDENT OF THE BUILDING DIVISION OF THE RESPONDENT, THE BODY OF WHICH READS AS FOLLOWS:

WE ARE OBLIGED TO RECORD TO YOU THAT NO AUTHORITY HAS BEEN GIVEN TO ANY ONE IN THIS COMPANY, OTHER THAN OUR DISTRICT MANAGER, MR. R. J. MERTL, TO SIGN ANY AGREEMENTS IN THE NORTH BAY AREA.

PROPERLY DOCUMENTED SIGNING AUTHORITY IS TABLED BY THIS COMPANY WITH ALL CONTRACTUAL AGREEMENTS. OUR MR. R. J. MERTL HAS BEEN INSTRUCTED TO CONTACT YOU IMMEDIATELY TO ENSURE THAT ALL NECESSARY AGREEMENTS ARE COMPLETED UNDER THE SEAL OF THIS COMPANY.

THE EVIDENCE IS THAT ON AUGUST 10TH, A MEETING TOOK PLACE ON THE JOB SITE WITH OUELLETTE, GUERTIN, DAVID AND MERTL IN ATTENDANCE. IT IS NOT RELEVANT TO OUTLINE THE TESTIMONY AS TO THE CONVERSATION THAT TOOK PLACE BETWEEN THE PARTIES OTHER THAN TO SAY THAT MERTL ASSERTED THAT THE AGREEMENT SIGNED BY DAVID WAS NOT VALID AND BINDING UPON THE RESPONDENT AND GUERTIN TOOK THE OPPOSITE POSITION. WE WOULD MENTION THAT THERE WAS A DIRECT CONFLICT BETWEEN THE EVIDENCE OF OUELLETTE AND MERTL AS TO WHETHER THE \$3.30 OR \$3.65 PER HOUR WAGE RATE HAS BEEN PAID TO CARPENTERS SINCE THE SIGNING OF THE AGREEMENT. OUELLETTE CLAIMS THAT A HIGHER RATE HAS BEEN PAID SINCE A WEEK AFTER THE AGREEMENT WAS SIGNED. MERTL ON THE OTHER HAND TESTIFIED THAT THE LOWER RATE IS STILL BEING PAID. BOTH AGREED, HOWEVER, THAT NO GRIEVANCES HAVE BEEN PROCESSED UNDER THE AGREEMENT.

11. WE WOULD FIRST STATE THAT IN THE ABSENCE OF ANY EVIDENCE TO THE CONTRARY, WE ACCEPT OUELLETTE'S EVIDENCE AS TO THE EVENTS AND CONVERSATION THAT TRANSPIRED BETWEEN HIMSELF AND DAVID. SECONDLY, WE WOULD POINT OUT THAT WHILE THE EVIDENCE OF BOSSONS IS THAT NO OFFICER OF THE RESPONDENT BELOW A DISTRICT MANAGER HAS EVER BEEN AUTHORIZED TO ENTER INTO A COLLECTIVE AGREEMENT ON BEHALF OF THE COMPANY, THERE IS NO EVIDENCE AS TO THE PAST PRACTICE OF THE APPLICANT AS TO THE RANK OF COMPANY OFFICIALS WITH WHOM IT HAS SIGNED COLLECTIVE AGREEMENTS.



CERTAINLY IT WOULD HAVE AIDED THE BOARD TO HAVE EVIDENCE ON THE LATTER SUBJECT. CLEARLY, ALSO, IT WOULD HAVE BEEN OF CONSIDERABLE ASSISTANCE TO THE BOARD HAD DAVID, WHO WAS THE ACTUAL SIGNATORY TO THE AGREEMENT, BEEN CALLED AS A WITNESS. NEVERTHELESS, DESPITE THE ABSENCE OF THE ABOVE EVIDENCE, THE BOARD MUST AND IS PREPARED TO MAKE THE NECESSARY FINDINGS ON THE BASIS OF THE EVIDENCE BEFORE IT.

12. HAVING REGARD TO BOSSONS' EVIDENCE AND BY-LAW No. 42 OF THE COMPANY, WHICH WAS FILED WITH THE BOARD, WE FIND THAT THE RESPONDENT, IN FACT, HAD NOT AUTHORIZED DAVID TO SIGN A COLLECTIVE AGREEMENT ON ITS BEHALF, DESPITE THE RATHER MYSTERIOUS UNIDENTIFIED TELEPHONE CALL HE RECEIVED IN THE PRESENCE OF OUELLETTE JUST PRIOR TO SIGNING THE AGREEMENT. BE THAT AS IT MAY, THE RELEVANT CONSIDERATION IS WHETHER DAVID HAD THE APPARENT AUTHORITY TO SIGN THE AGREEMENT ON BEHALF OF THE RESPONDENT. THIS IN TURN IS DEPENDENT ON TWO FACTORS, NAMELY, WHETHER DAVID HELD HIMSELF OUT AS HAVING SUCH AUTHORITY AND WHETHER OUELLETTE REASONABLY BELIEVED THAT HE HAD SUCH AUTHORITY.

13. BEFORE CONSIDERING THESE FACTORS WE WOULD FIRST DEAL WITH THE SUGGESTION MADE IN THE EVIDENCE OF THE RESPONDENT'S WITNESSES THAT OUELLETTE MISLED DAVID BOTH AS TO THE WORKING CONDITIONS IN THE AREA AND THE NATURE OF THE COLLECTIVE AGREEMENT WHICH HE SIGNED. WE ARE SATISFIED ON THE EVIDENCE THAT AT THE TIME DAVID SIGNED THE AGREEMENT ON JULY 27TH, HE WAS FULLY AWARE OF THE DISCREPANCY IN THE WAGE RATES BEING PAID TO CARPENTERS BY LOCAL CONTRACTORS SUCH AS FARQUHAR CONSTRUCTION LIMITED AND BY "OUTSIDE" CONTRACTORS LIKE THE RESPONDENT ITSELF, NAMELY P. R. CONNOLLY CONSTRUCTION LTD. AND BENNETT-PRATT LTD. WE FURTHER FIND ON THE EVIDENCE THAT DAVID HAD AN OPPORTUNITY TO FULLY APPRAISE THE CONTENTS OF THE COLLECTIVE AGREEMENT PRESENTED TO HIM BY OUELLETTE FOR EXECUTION WHICH AGREEMENT PROVIDED FOR THE \$3.65 WAGE RATE. MOREOVER, SINCE IT APPEARS FROM THE EVIDENCE THAT DAVID ALREADY HAD A COPY OF THE FARQUHAR CONSTRUCTION LIMITED AGREEMENT IN HIS POSSESSION, UNLESS HE WAS MOST CARELESS, AND THERE IS NO EVIDENCE TO THAT EFFECT, WE MUST ASSUME THAT HE KNEW THAT HE WAS SIGNING THE SAME FORM OF COLLECTIVE AGREEMENT WHICH HAD BEEN EXECUTED BY OTHER "OUTSIDE" CONTRACTORS. IN OTHER WORDS, WE DO NOT FIND THAT THE APPLICANT MISLED DAVID AS TO THE NATURE OR CONTENT OF THE COLLECTIVE AGREEMENT WHICH HE SIGNED.

14. WE TURN NOW TO A CONSIDERATION OF DAVID'S OSTENSIBLE OR APPARENT AUTHORITY TO SIGN THE COLLECTIVE AGREEMENT IN QUESTION ON BEHALF OF THE RESPONDENT. ACCORDING TO OUELLETTE'S EVIDENCE, DAVID ADVISED OUELLETTE THAT HE WAS PREPARED TO SIGN AN AGREEMENT, THE ONLY QUALIFICATION BEING THAT OUELLETTE PROVIDE A COPY OF AN AGREEMENT EXECUTED FOR THE NORTH BAY AREA. MOREOVER, AT THE TIME OF SIGNING THE FOLLOWING DAY THERE IS NO EVIDENCE TO SUGGEST THAT DAVID INDICATED IN ANY WAY THAT THE AGREEMENT WAS SUBJECT TO THE APPROVAL OR AUTHORIZATION OF A MORE SENIOR OFFICIAL OR OFFICIALS OF THE RESPONDENT. WE ACCORDINGLY FIND THAT DAVID HELD HIMSELF OUT AS HAVING AUTHORITY TO SIGN THE AGREEMENT ON BEHALF OF THE RESPONDENT. WE WOULD ADD, MOREOVER, THAT DAVID'S CONDUCT WAS CONSISTENT WITH THE ACTUAL AUTHORITY GIVEN TO HIM BY RESPONDENT, NAMELY, TO HIRE MEN THROUGH THE APPLICANT TO WORK ON THE JOB SITE.

15. THE NEXT QUESTION FOR DETERMINATION IS WHETHER OUELLETTE REASONABLE BELIEVED THAT DAVID HAD AUTHORITY TO SIGN THE AGREEMENT ON BEHALF OF THE RESPONDENT. THE MOST SIGNIFICANT FACT RELATING TO THIS ISSUE IS THAT DAVID WAS THE ONLY MEMBER OF THE MANAGEMENT OF THE RESPONDENT ON THE CONSTRUCTION FROM THE COMMENCEMENT OF THE JOB TO THE TIME WHEN THE AGREEMENT WAS EXECUTED. FURTHER, DAVID MADE ALL OF THE ARRANGEMENTS WITH OUELLETTE FOR THE HIRING OF THE CARPENTERS WHO WERE EMPLOYED ON THE PROJECT. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT IT WAS REASONABLE FOR OUELLETTE TO BELIEVE THAT DAVID HAD THE AUTHORITY WHICH HE HELD HIMSELF OUT AS HAVING, NAMELY, THE AUTHORITY TO SIGN THE AGREEMENT ON BEHALF OF THE RESPONDENT. WE WOULD ADD THAT THE SUBSEQUENT LETTER OF HERBERT TO GUERTIN OF AUGUST 2ND, IN OUR VIEW, CANNOT RESCIND OR VOID THE COLLECTIVE AGREEMENT.

16. FINALLY, WITH REFERENCE TO THE FACT THAT THE COMPANY SEAL DOES NOT APPEAR ON THE COLLECTIVE AGREEMENT EXECUTED BY DAVID, WE WOULD POINT OUT THAT THE BOARD HAS HELD THAT THERE IS NO NECESSITY FOR A COLLECTIVE AGREEMENT TO BE FORMAL AS TO FORM. INDEED, A COLLECTIVE AGREEMENT MAY BE CONCLUDED BY EXCHANGE OF CORRESPONDENCE BETWEEN THE PARTIES. ACCORDINGLY, WE FIND THAT EVEN IN THE ABSENCE OF THE COMPANY SEAL FROM THE AGREEMENT ENTERED INTO BY THE PARTIES, THE DOCUMENT SIGNED BY DAVID AND GUERTIN IS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT.

17. THE BOARD THEREFORE FINDS THAT THERE IS A VALID AND BINDING COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND THE RESPONDENT. SINCE THE APPLICANT ALREADY HELD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT WHO ARE THE SUBJECT OF THIS APPLICATION, AS OF THE DATE OF ITS MAKING, THE BOARD FURTHER FINDS THAT THE APPLICATION IS UNTIMELY.

18. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

13572-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. WM. R. BARNES COMPANY, LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: I. J. THOMSON AND B. BEACROFT FOR THE APPLICANT, E. L. STRINGER AND JOHN MACKENZIE FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD:

SEPTEMBER 21, 1967.

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2. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT CARRIES ON THE BUSINESS OF PROCESSING FOUNDRY SUPPLIES AND INDUSTRIAL MINERALS. THE RESPONDENT, IN CONJUNCTION WITH ITS MANUFACTURING BUSINESS, OPERATES A FLEET OF TRUCKS WHICH ARE USED TO BRING IN MATERIALS TO BE PROCESSED BY THE RESPONDENT AND FOR DELIVERING THE PROCESSED MATERIALS TO THE RESPONDENT'S CUSTOMERS. FOR THE PAST THREE YEARS, THE RESPONDENT'S TRUCKS HAVE BEEN DELIVERING MATERIALS TO CUSTOMERS IN THE PROVINCE OF QUEBEC AND HAVE BROUGHT BACK MATERIALS FROM A QUARRY LOCATED IN THE PROVINCE OF QUEBEC FOR PROCESSING AT THE RESPONDENT'S PLANTS AT WATERDOWN AND MILTON. CURRENTLY, ONE OF THE RESPONDENT'S TRUCKS GOES TO QUEBEC ON AN AVERAGE OF ONCE A WEEK. THE RESPONDENT IS NOT A COMMON CARRIER AND THE RESPONDENT'S TRUCKS ARE NOT LICENSED IN ONTARIO OR QUEBEC AS PUBLIC COMMERCIAL VEHICLES SINCE ALL OF THE GOODS CARRIED ON THE RESPONDENT'S TRUCKS ARE OWNED BY THE RESPONDENT.

3. AT THE HEARING, THE RESPONDENT ARGUED THAT THIS BOARD HAS NO JURISDICTION TO ENTERTAIN THIS APPLICATION BECAUSE THE COMPANY'S TRUCKS REGULARLY AND CONTINUOUSLY CARRY ITS GOODS TO AND FROM THE PROVINCE OF QUEBEC. THE RESPONDENT FURTHER ARGUED THAT SINCE THE RESPONDENT CARRIED ITS GOODS BEYOND THE PROVINCE OF ONTARIO ON A REGULAR AND CONTINUOUS BASIS, PURSUANT TO THE PRINCIPLES ENUNCIATED BY THE COURT IN RE TANK TRUCK TRANSPORT LTD. CASE, 61 C.L.L.C. P. 183, THIS MATTER FALLS UNDER FEDERAL JURISDICTION.

4. THE REAL ISSUE BEFORE THE BOARD EVOLVES AROUND THE QUESTION OF THE NATURE OF THE RESPONDENT'S BUSINESS OR UNDERTAKING. THE ESSENCE OF THE RESPONDENT'S BUSINESS IS THAT OF A MANUFACTURER OR PROCESSOR OF FOUNDRY AND INDUSTRIAL AGGREGATES. THE FACT THAT THE GOODS MANUFACTURED OR PROCESSED BY THE RESPONDENT ARE SOMETIMES SOLD TO CUSTOMERS OUTSIDE THE PROVINCE IN NO WAY CHANGES THE ESSENTIAL NATURE OF THE RESPONDENT'S BUSINESS. AGAIN, THE FACT THAT THE GOODS ARE DELIVERED BY THE RESPONDENT IN ITS TRUCKS IN THE MANNER DESCRIBED ABOVE DOES NOT, IN OUR OPINION, CHANGE THE ESSENTIAL NATURE OF THE RESPONDENT'S BUSINESS. WHILE THERE IS SOME INTERCONNECTING ACTIVITY AND SOME INTERPROVINCIAL ACTIVITY THESE ACTIVITIES ARE MERELY INCIDENTAL TO THE PRIMARY ACTIVITY OF MANUFACTURING AND ARE OF A TOTALLY DIFFERENT NATURE AND READILY DISTINGUISHABLE FROM THE PRIMARY ACTIVITY OF MANUFACTURING. WHILE THE CARRIAGE OF THE RESPONDENT'S GOODS IS DISTINGUISHABLE FROM THE ACTIVITY OF MANUFACTURING, THE MANUFACTURE AND DELIVERY OF THE RESPONDENT'S GOODS ARE INTEGRATED ACTIVITIES WHICH ARE NOT SEVERABLE BUT ARE PART AND PARCEL OF THE RESPONDENT'S TOTAL UNDERTAKING. IF, HOWEVER, THE TRUCKING PART OF THE RESPONDENT'S TOTAL UNDERTAKING COULD BE SEVERED FROM THE MANUFACTURING PART, AND IF THE TRUCKING BUSINESS OF THE RESPONDENT WAS THAT OF A COMMON CARRIER, WE WOULD AGREE WITH THE RESPONDENT'S ARGUMENT THAT SINCE THE TRIPS TO QUEBEC ARE REGULAR AND CONTINUOUS, THE FACT SUCH TRIPS ONLY FORM A SMALL PERCENTAGE OF THE TOTAL TRUCKING OPERATIONS WOULD NOT OF ITSELF TAKE THE RESPONDENT OUT FROM UNDER THE PRINCIPLE ENUNCIATED IN RE TRANK TRUCK TRANSPORT LTD. CASE.



5. THE INSTANT CASE, HOWEVER, IS READILY DISTINGUISHABLE FROM RE TANK TRUCK TRANSPORT LTD. CASE. THE COMPANY IN RE TANK TRUCK TRANSPORT LTD. CASE WAS A COMMON CARRIER AND ITS UNDERTAKINGS CONNECTED ONE PROVINCE WITH ANOTHER WITHIN THE MEANING OF SECTION 92(10) OF THE BRITISH NORTH AMERICA ACT ON A REGULAR AND CONTINUOUS BASIS. ACCORDINGLY, THE UNDERTAKING OF THE COMMON CARRIER FELL WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA PURSUANT TO THE PROVISIONS OF SECTION 91(29) OF THAT ACT. IN THE INSTANT CASE, THE RESPONDENT IS NOT A COMMON CARRIER BUT IS A MANUFACTURER.

6. IF THE RESPONDENT'S ARGUMENT WAS SOUND, EVERY MANUFACTURER WHICH DOES BUSINESS OUTSIDE THE BOUNDARIES OF THE PROVINCE AND USES ITS OWN TRUCKS FOR MAKING DELIVERY RATHER THAN USING THE SERVICES OF A COMMON CARRIER WOULD THEREBY TAKE ITSELF FROM UNDER PROVINCIAL JURISDICTION. SUCH AN INTERPRETATION WOULD VIRTUALLY ELIMINATE LOCAL UNDERTAKINGS IF EMPLOYERS CONSIDERED IT TO BE TO THEIR ADVANTAGE TO BE UNDER FEDERAL JURISDICTION.

7. COUNSEL FOR THE RESPONDENT RELIED UPON THE REASONING OF THE ALBERTA LABOUR RELATIONS BOARD IN THE WESTERN ASPHALT DISTRIBUTORS (ALBERTA) LTD. CASE, 66 C.L.L.C. ¶16, 103, WHICH, ON ITS FACTS, IS NOT READILY DISTINGUISHABLE FROM THE FACTS OF THE INSTANT CASE. HOWEVER, IT APPEARS THAT THE ALBERTA BOARD REFERRED TO THE REASONING OF MR. JUSTICE RILEY IN THE BREWSTER TRANSPORT COMPANY LIMITED CASE. THE BREWSTER CASE AGAIN WAS DEALING WITH THE UNDERTAKING OF A COMMON CARRIER. MR. JUSTICE RILEY IN THAT CASE APPLIED THE "PITH AND SUBSTANCE" RULE AND FOUND THE PITH AND SUBSTANCE OF THE BREWSTER OPERATION TO BE PROVINCIAL. IF THIS RULE IS APPLIED TO THE UNDERTAKING OF THE RESPONDENT, IN VIEW OF THE FACT THAT THE RESPONDENT IS A MANUFACTURER AS DISTINGUISHED FROM A COMMON CARRIER, THE PITH AND SUBSTANCE OF THE RESPONDENT'S OPERATIONS ARE LOCAL AND PROVINCIAL IN NATURE. WHILE THE ALBERTA BOARD FOUND THAT THE WESTERN ASPHALT DISTRIBUTORS, WHICH WAS ENGAGED IN THE BUSINESS OF SUPPLYING ASPHALT FOR ROAD CONSTRUCTION, WAS INVOLVED IN MORE THAN "INCIDENTAL PENETRATION OF PROVINCIAL BOUNDARIES" IT APPEARS TO VIEW SUCH PENETRATION AS IF THE COMPANY WERE A COMMON CARRIER. IF WESTERN ASPHALT DISTRIBUTORS WAS ENGAGED IN THE BUSINESS OF SUPPLYING ASPHALT AS A COMMON CARRIER WE CANNOT QUARREL WITH THE ALBERTA BOARD'S DECISION. IT DOES NOT APPEAR FROM THE DECISION, HOWEVER, THAT THE QUESTION OF THE ESSENCE OR REAL NATURE OF THE COMPANY'S UNDERTAKING WAS CONSIDERED. THE ONLY THING THE ALBERTA BOARD APPEARED TO CONSIDER WAS THE TRUCK OPERATION PORTION OF THE COMPANY'S BUSINESS (WHICH INDEED MAY HAVE BEEN THE TOTALITY OF ITS UNDERTAKING). HOWEVER IF, AS WE UNDERSTAND THE RESPONDENT'S SUGGESTION IN THE INSTANT CASE, WESTERN ASPHALT DISTRIBUTORS WAS IN THE BUSINESS OF MANUFACTURING ASPHALT WHICH IT THEN DISTRIBUTED TO ITS CUSTOMERS, WE DO NOT ACCEPT THIS CASE AS BINDING UPON US AND SINCE IT DOES NOT DEAL WITH WHAT WE CONSIDER TO BE THE REAL ISSUE BEFORE US WE DO NOT CHOOSE TO FOLLOW IT.

8. HAVING REGARD TO ALL THE EVIDENCE, THE REPRESENTATIONS OF THE PARTIES AND THE CASES HEREIN REFERRED TO, WE FIND THAT THE RESPONDENT IN THIS CASE, BEING A MANUFACTURER OF FOUNDRY SUPPLIES AND INDUSTRIAL



MINERALS, IS ENGAGED IN AN UNDERTAKING WHICH, BY ITS ESSENTIAL NATURE, IS LOCAL IN SUBSTANCE AND ACCORDINGLY FALLS WITHIN THE JURISDICTION OF THIS BOARD FOR THE PURPOSE OF LABOUR RELATIONS AND WE THEREFORE ASSERT JURISDICTION IN THIS CASE.

9. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

10. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WATERDOWN AND MILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 5TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13589-67-R: NURSES' ASSOCIATION BELLEVILLE GENERAL HOSPITAL (APPLICANT)  
V. BELLEVILLE GENERAL HOSPITAL (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: D.F.O. HERSEY, MRS. M. COUSINS AND  
MISS A. GRIBBEN FOR THE APPLICANT, D.G. CUNNINGHAM, Q.C., AND  
P. RICKARD FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 25, 1967.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT BELLEVILLE ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT ASSISTANT SUPERVISORS AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 8TH, 1967, THE TERMINAL DATE FIXED FOR THIS

APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

4. THE LIST OF PERSONS INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT IS 192. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 126 OF THESE PERSONS. THE DATES ON 89 OF THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS FILED WITH THE BOARD, HOWEVER, INDICATE THAT THE PERSONS CONCERNED SIGNED THE MEMBERSHIP CARDS LESS THAN A YEAR BUT MORE THAN SIX MONTHS PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION. IN THESE CIRCUMSTANCES, THE BOARD IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 7(2) OF THE LABOUR RELATIONS ACT, AND IN ACCORDANCE WITH ITS USUAL PRACTICE, DIRECTS THE TAKING OF A REPRESENTATION VOTE.

5. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

13596-67-R: LOCAL UNION 46 - UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) v. SHELL CANADA LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: D. CLARK FOR THE APPLICANT, W.S. COOK, L.L. JUPE, W.F. HAMBLY AND D. H. SCHOFIELD FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 18, 1967.

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4. THE APPLICANT IN THIS CASE IS LOCAL UNION NO. 46. THE EVIDENCE OF MEMBERSHIP FILED IN SUPPORT OF THE APPLICATION CONSISTS OF APPLICATIONS FOR MEMBERSHIP IN THE PARENT BODY, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA. WE WOULD MENTION THAT THERE IS A SPACE ON THE APPLICATION FORMS IN WHICH AN APPLICANT CAN SPECIFY A LOCAL UNION NUMBER. THIS SPACE WAS NOT COMPLETED ON ANY OF THE APPLICATION FORMS FILED WITH THE BOARD. MOREOVER, THERE IS NO REFERENCE TO LOCAL 46 ON THE RECEIPTS ATTACHED TO THE APPLICATION.

5. THE BOARD HAS HELD THAT EVIDENCE OF MEMBERSHIP IN A LOCAL UNION

IS EVIDENCE OF MEMBERSHIP IN THE PARENT UNION OF THE PARTICULAR LOCAL. THE BOARD, HOWEVER, HAS NEVER HELD THAT THE EVIDENCE OF MEMBERSHIP IN THE PARENT IS PER SE EVIDENCE OF MEMBERSHIP IN A PARTICULAR LOCAL (SEE MILSON FLOORS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966 P. 419).

6. ON THE BASIS OF THE EVIDENCE OF MEMBERSHIP FILED IN THE INSTANT CASE, THE BOARD IS UNABLE TO FIND THAT THERE IS DOCUMENTARY EVIDENCE BEFORE IT THAT THE EMPLOYEES AFFECTED BY THE APPLICATION ARE MEMBERS OF LOCAL 46 WITHIN THE MEANING OF SECTION 7 OF THE LABOUR RELATIONS ACT.

7. IN THESE CIRCUMSTANCES, THE APPLICATION IS DISMISSED.

13602-67-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION No. 124, OTTAWA - HULL (APPLICANT) V. BEAVER FOUNDATIONS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 18, 1967.

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4. THE BOARD FURTHER FINDS THAT ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING THREE NAMES AND SPECIMEN SIGNATURES, WITH RESPECT TO THE APPLICATION FOR CERTIFICATION BY THE APPLICANT, WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. THE APPLICANT FILED TWO CERTIFICATES OF MEMBERSHIP. ONE CERTIFICATE IS SIGNED BY THE MEMBER AND INDICATES THAT MONTHLY DUES OF \$7.00 HAS BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATE IS CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE SECOND CERTIFICATE OF MEMBERSHIP INDICATES THAT MONTHLY DUES WERE PAID FOR THE MONTH OF AUGUST, 1967. THE SPACE INDICATING THE AMOUNT OF THE MONTHLY DUES PAYMENTS, HOWEVER, WAS NOT COMPLETED. FURTHER, THE SPACE ON THE CERTIFICATE INDICATING WHEN THE EMPLOYEE CONCERNED BECAME AN INITIATED MEMBER IS NOT COMPLETED. THE CERTIFICATE IS CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. BOTH CERTIFICATES OF MEMBERSHIP CORRESPOND WITH NAMES APPEARING ON THE LIST FILED BY THE RESPONDENT.



7. THE LICARI & SONS CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 57, WAS AN APPLICATION FOR CERTIFICATION MADE BY THE SAME APPLICANT AS IN THE INSTANT CASE. FURTHER, THE FORM OF THE CERTIFICATES OF MEMBERSHIP SUBMITTED IN THE FORMER APPLICATION WAS IDENTICAL TO THAT SUBMITTED IN THIS APPLICATION. THE BOARD IN ITS DECISION IN THE EARLIER CASE REJECTED THE CERTIFICATES OF MEMBERSHIP FILED BY THE APPLICANT ON THE GROUNDS THAT THE EVIDENCE REVEALED THAT WHEN THE EMPLOYEES SIGNED THE CERTIFICATES THE BLANK SPACES ABOVE THE PLACE FOR THEIR SIGNATURES HAD NOT BEEN FILLED IN. MORE SPECIFICALLY, THE AMOUNT OF MONTHLY DUES PAID, THE MONTH AND YEAR PAID, AND THE DATE OF INITIATION WERE NOT COMPLETED WHEN THE EMPLOYEES SIGNED THE CERTIFICATES.

8. THE BOARD IN ITS DECISION IN THE ABOVE CASE OUTLINED IN SOME CONSIDERABLE DETAIL THE BOARD'S REQUIREMENTS CONCERNING EVIDENCE OF MEMBERSHIP AND THE PURPOSE OF THESE REQUIREMENTS AS A GUIDE TO THE APPLICANT IN ANY FUTURE APPLICATION FOR CERTIFICATION THAT IT MIGHT MAKE TO THE BOARD. WITH REGARD TO THE REQUIREMENTS OF THE BOARD AND THEIR PURPOSE WHEN CERTIFICATES OF MEMBERSHIP ARE FILED AS EVIDENCE OF MEMBERSHIP, THE BOARD MADE THE FOLLOWING STATEMENT IN THE LICARI & SONS DECISION AT P. 59:

THE SECOND FORM OF MEMBERSHIP EVIDENCE CONSISTS OF DOCUMENTARY EVIDENCE THAT THE PERSONS CONCERNED ARE IN FACT MEMBERS OF THE APPLICANT UNION. THIS FORM USUALLY CONSISTS OF CERTIFICATES OF MEMBERSHIP OR DUES BOOKS AND IS USED WHERE THE EMPLOYEES IN QUESTION ARE MEMBERS AND THERE IS NO NEED TO SIGN THEM UP AGAIN FOR PURPOSES OF THE APPLICATION. DUES BOOKS WILL ACCURATELY REFLECT THE EXACT STATUS OF THE MEMBER. CERTIFICATES OF MEMBERSHIP ARE INTENDED TO ACCOMPLISH THE SAME PURPOSE AND IT IS IMPORTANT THAT THE STATEMENTS CONTAINED THEREIN BE ACCURATE IN ALL RESPECTS. IF THEY CONTAIN A STATEMENT THAT THE PERSON WAS INITIATED ON A SPECIFIC DATE, THAT PERSON MUST HAVE BEEN IN FACT SO INITIATED. IF THEY CERTIFY THAT MONTHLY DUES HAVE BEEN PAID, THESE DUES MUST HAVE IN FACT BEEN PAID AND NOT, AS IN THIS CASE, AN INITIATION FEE ONLY AND THIS SOME MONTHS PRIOR TO THE MONTH FOR WHICH IT IS ASSERTED THAT DUES HAVE BEEN PAID. AS HAS BEEN POINTED OUT IN MANY DECISIONS, THE BOARD IS DEPENDENT TO A LARGE EXTENT ON THE DOCUMENTARY EVIDENCE FILED BY THE UNION BECAUSE IT WOULD BE AN IMPOSSIBLE TASK FOR IT TO VERIFY THE MEMBERSHIP EVIDENCE FOR EVERY INDIVIDUAL BY CONDUCTING A PERSONAL INQUIRY. IT IS INCUMBENT, THEREFORE, UPON UNIONS TO BE MOST CIRCUMSPECT WITH THE DOCUMENTARY EVIDENCE THEY FILE AND TO MAKE SURE THAT IT IS ACCURATE IN ALL RESPECTS. IN THE CASE OF THE PRESENT APPLICANT, IT WILL NOW HAVE TO RE-EXAMINE ITS USE OF CERTIFICATES OF MEMBERSHIP IN THE LIGHT OF THE ABOVE CONSIDERATIONS AND ITS OWN PRACTICES AND PROCEDURES.



9. AS IS INDICATED IN THE ABOVE PASSAGE THE BOARD ACCEPTS CERTIFICATES OF MEMBERSHIP IN LIEU OF ACTUAL DUES BOOKS. THIS IS DONE AS A MATTER OF CONVENIENCE TO THE UNION MAKING THE CERTIFICATION APPLICATION. THE BOARD EMPHASIZED, HOWEVER, THAT IN ACCEPTING CERTIFICATES OF MEMBERSHIP, IT IS INCUMBENT UPON THE UNION CONCERNED TO ENSURE THAT THE INFORMATION CONTAINED IN THE CERTIFICATES IS CORRECT IN ALL RESPECTS AS THE BOARD IS VERY LARGELY DEPENDENT ON THE DOCUMENTARY EVIDENCE FILED BY THE UNION. TO THIS REQUIREMENT WE WOULD ADD THAT IT IS NECESSARY AND AN OBLIGATION UPON THE UNION, WHEN ITS EVIDENCE OF MEMBERSHIP TAKES THE FORM OF CERTIFICATES OF MEMBERSHIP, THAT THE INFORMATION CONTAINED IN THE CERTIFICATES BE COMPLETE. IN THE INSTANT CASE, HOWEVER, DESPITE THE VERY EXPLICIT GUIDANCE GIVEN TO THE APPLICANT IN THE LICAR DECISION ONLY FIVE MONTHS AGO, ONE OF THE CERTIFICATES OF MEMBERSHIP FILED BY THE APPLICANT IN THE INSTANT APPLICATION, THE FORM OF WHICH WE WOULD ADD WAS PREPARED BY THE APPLICANT ITSELF, FAILS TO PROVIDE ALL OF THE INFORMATION REQUIRED BY THE FORM. IN LIGHT OF ALL THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO ACCEPT THE CERTIFICATE OF MEMBERSHIP AS EVIDENCE OF MEMBERSHIP IN THE APPLICANT FOR THE PERSON ON WHOSE BEHALF IT WAS FILED.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 12TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. THE APPLICATION ACCORDINGLY IS DISMISSED.

13597-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - LOCAL 79 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 20, 1967.

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2. THE APPLICANT APPLIED ON AUGUST 31ST, 1967 AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

3. ALL THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THIS MATTER CONSISTED OF COMBINATION APPLICATION RECEIPT CARDS IN THE "CANADIAN UNION OF OPERATING ENGINEERS". IF THIS APPLICATION HAD BEEN MADE BY THE CANADIAN UNION OF OPERATING ENGINEERS (WHICH IS THE PARENT UNION OF THE APPLICANT) THERE WOULD BE NO OBJECTION TO THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED, SINCE ALL THE EMPLOYEES APPLIED FOR MEMBERSHIP IN THAT UNION. HOWEVER,

THERE IS NOTHING CONTAINED ON THE FACE OF THE APPLICATION CARDS OR THE RECEIPT CARDS WHICH INDICATES THAT THE EMPLOYEES INTENDED TO BECOME MEMBERS OF LOCAL 101, THE APPLICANT IN THIS CASE.

4. IT IS NOT THE BOARD'S USUAL PRACTICE TO TREAT EVIDENCE OF MEMBERSHIP IN THE PARENT BODY AS MEMBERSHIP EVIDENCE IN A PARTICULAR LOCAL OF THAT PARENT, WHERE THE LOCAL IS NOT REFERRED TO IN EITHER THE APPLICATION OR THE RECEIPT CARD. (SEE SHELL CANADA LIMITED CASE, BOARD FILE 13596-67-R, SEPTEMBER 18, 1967, MILSON FLOORS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 419, AND METROPOLITAN LIFE INSURANCE COMPANY CASE, BOARD FILE 12779-66-R, AUGUST 29, 1967).

5. ACCORDINGLY, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO FILE ANY DOCUMENTARY EVIDENCE OF MEMBERSHIP IN THE APPLICANT IN THIS MATTER.

6. THE BOARD THEREFORE FINDS ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM TO BE APPROPRIATE WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

7. THE APPLICATION IS THEREFORE DISMISSED.

13613-67-R: REDI-STEEL EMPLOYEES ASSOCIATION (APPLICANT) V. REDI-STEEL PRODUCTS LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: MURRAY C. DILLON FOR THE  
APPLICANT AND W.S. COOK, A. COLLINS FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 25, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE APPLICANT NOT HAVING PREVIOUSLY MADE AN APPLICATION FOR CERTIFICATION, THE BOARD ACCORDINGLY CALLED UPON IT TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. FROM THE EVIDENCE GIVEN AT THE HEARING AND THE EXHIBITS FILED WITH THE BOARD IN SUPPORT THEREOF, THE APPLICANT HAS SATISFIED THE USUAL REQUIREMENTS OF THE BOARD IN ESTABLISHING ITS STATUS AS A TRADE UNION AND THE BOARD, THEREFORE, FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. THIS APPLICATION WAS MADE ON SEPTEMBER 7TH, 1967.

5. ON THE 26TH DAY OF AUGUST, 1966, THE BOARD ISSUED A CERTIFICATE TO THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AS THE BARGAINING AGENT OF ALL EMPLOYEES OF REDI STEEL PRODUCTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF TORONTO STEEL FABRICATORS, IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. THE APPLICANT IN THE INSTANT CASE ADVISED THE BOARD THAT ITS APPLICATION COVERED THE SAME UNIT OF EMPLOYEES AS WAS COVERED IN THE CERTIFICATE DATED AUGUST 26TH, 1966 ABOVE MENTIONED.

6. THE RESPONDENT FILED WITH THE BOARD AT THE HEARING, A LETTER DATED AUGUST 3RD, 1967, ADDRESSED TO THE RESPONDENT FROM THE DEPUTY MINISTER OF LABOUR STATING THAT THE MINISTER OF LABOUR DECIDED NOT TO APPOINT A BOARD OF CONCILIATION IN REFERENCE TO THE DISPUTE BETWEEN THE RESPONDENT AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS.

7. HAVING REGARD TO SECTIONS 5(1a), 46 AND 85 OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS APPLICATION IS TIMELY.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 14TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(j) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY. ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.

10. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS.

12. THE MATTER IS REFERRED TO THE REGISTRAR.



13619-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. PRECISION RECORD PRODUCTIONS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 28, 1967.

1. THE APPLICANT APPLIED ON SEPTEMBER 11TH, 1967 TO BE CERTIFIED FOR CERTAIN EMPLOYEES OF THE RESPONDENT AND THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. THE RESPONDENT FILED A LIST CONTAINING THE NAMES OF 36 EMPLOYEES AS OF THE DATE OF THE MAKING OF THE APPLICATION. THE APPLICANT FILED A TOTAL OF 18 COMBINATION APPLICATION AND RECEIPT CARDS, FIFTEEN OF WHICH CORRESPONDED TO NAMES APPEARING ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. HOWEVER, ONE OF THE APPLICANT'S MEMBERSHIP CARDS WHICH CORRESPONDED TO A NAME ON THE RESPONDENT'S LIST BORE THE DATE OF SEPTEMBER 12TH, WHICH IS ONE DAY AFTER THE DATE OF THE MAKING OF THE APPLICATION. ACCORDINGLY, AS OF THE DATE OF THE MAKING OF THIS APPLICATION, THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF 14 PERSONS WHOSE NAMES APPEARED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

3. AT THE PRE-HEARING VOTE MEETING THE APPLICANT CHALLENGED THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND SPECIFICALLY CHALLENGED THE NAMES OF JAMES BISSON AND BILL ROCHON. BOTH MESSRS. BISSON AND ROCHON WERE CHALLENGED BY THE APPLICANT ON THE GROUNDS THAT THEY WERE "SALARY RATED" EMPLOYEES RATHER THAN HOURLY PAID EMPLOYEES. WHILE THE METHOD OF PAYMENT IS NOT A VALID REASON FOR EXCLUSION FROM AN ALL EMPLOYEE UNIT, HOWEVER, EVEN IF THE BOARD ACCEPTED THE APPLICANT'S ARGUMENT THAT THESE TWO PERSONS WERE NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT, THE LIST OF EMPLOYEES WOULD BE REDUCED TO 34 PERSONS.

4. IF THE LIST OF EMPLOYEES FOR THE PURPOSE OF ASCERTAINING THE MEMBERSHIP POSITION WAS IN FACT 34 IN NUMBER, THE APPLICANT WOULD REQUIRE AT LEAST 16 OF SUCH PERSONS AS MEMBERS ON THE DATE OF THE MAKING OF THE APPLICATION, PURSUANT TO THE PROVISIONS OF SECTION 8 OF THE LABOUR RELATIONS ACT, IN ORDER TO BE ENTITLED TO A REPRESENTATION VOTE IN THIS CASE. ONLY 14 OF THE PERSONS WHOSE NAMES APPEARED IN A REDUCED LIST OF 34 WERE CLAIMED BY THE APPLICANT AS MEMBERS ON THE DATE OF THE MAKING OF THE APPLICATION.

5. THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS CLAIMED LESS THAN FORTY-FIVE PER CENT OF THE PERSONS IN THE VOTING CONSTITUENCY AS MEMBERS AS OF THE DATE THE APPLICATION WAS MADE (EVEN IF THE VOTING CONSTITUENCY IS REDUCED AS SUGGESTED BY THE APPLICANT).

6. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANT HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED.



13662-67-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1891 (APPLICANT) V. WENZEL DRYWALL LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 22, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION. IN SUPPORT THEREOF THE APPLICANT FILED A NUMBER OF COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THESE DOCUMENTS READ IN PART AS FOLLOWS:

APPLICATION FOR MEMBERSHIP

No.....

DATE.....

ORGANIZATION.....LOCAL No.....

I HEREBY APPLY FOR MEMBERSHIP IN THE LOCAL UNION OF THE ABOVE-MENTIONED INTERNATIONAL UNION, AFFILIATED WITH A.F.L.-C.I.O. IF ACCEPTED, AS A MEMBER, I PROMISE TO ABIDE BY THE BY-LAWS OF THE LOCAL UNION AND THE CONSTITUTION OF THE INTERNATIONAL UNION. I AUTHORIZE THE ORGANIZATION TO BE MY EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE.

THE NAME OF THE ORGANIZATION AND THE LOCAL NO. HAVE NOT BEEN INSERTED ON THE CARDS FILED WITH THE BOARD. THE NAME OF THE APPLICANT DOES NOT APPEAR ANYWHERE ELSE ON THE COMBINATION CARDS AND RECEIPTS.

2. IT IS CLEAR THAT THE MEMBERSHIP EVIDENCE FILED IN SUPPORT OF THIS APPLICATION DOES NOT MEET THE STANDARDS REQUIRED BY THE BOARD. IN THESE CIRCUMSTANCES, THE BOARD HAS NO HESITATION IN FINDING THAT THE APPLICANT HAS FAILED TO MAKE OUT A PRIMA FACIE CASE AND, PURSUANT TO SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - TERMINATION

13468-67-R: SHERIDAN MCGINTY (APPLICANT) V. FUR AND LEATHER WORKERS UNION LOCAL 82 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO (RESPONDENT) V. COOPER-WEEKS LIMITED (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: ROBERT F. EVANS, SHERIDAN MCGINTY, GERTRUDE MARTIN AND MARGUERITE BAILEY FOR THE APPLICANT, J. H. OSLER, Q.C., AND VINCENT GENTILE FOR THE RESPONDENT, AND A. J. CLARK AND W. E. WAIT FOR THE INTERVENER.

DECISION OF THE BOARD:

SEPTEMBER 6, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT, PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.
2. THE RESPONDENT IS BARGAINING AGENT FOR ALL EMPLOYEES OF COOPER-WEEKS LIMITED AT ITS 501 ALLIANCE AVENUE PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.
3. THERE WERE SUBMITTED IN SUPPORT OF THIS APPLICATION EIGHT DOCUMENTS WHICH TOGETHER BEAR THE SIGNATURES OF MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE RESPONDENT IS BARGAINING AGENT. THESE DOCUMENTS EACH BEAR THE FOLLOWING PREAMBLES, IN THE ENGLISH AND ITALIAN LANGUAGES:-

THE UNDER SIGNED EMPLOYEES OF COOPER-WEEKS LTD.  
501 ALLIANCE AVE. TORONTO PLANT NO LONGER WISH  
TO BE REPRESENTED BY THE FUR & LEATHER WORKERS  
UNION LOCAL - 82 AMC & BW OF NA, AFL-CIO.

NOI SOTTO SCRITTO OPERAI DELLO COOPER WEEKS LTD.  
DI 501 ALLIANCE AVE. DI TORONTO, NON VOGLIAMO PIU  
APPORTENERE ALL' UNIONE COSI' CHIAMATO FUR & LEATHER  
WORKER'S UNION LOCAL 82 AMC & BW DI NA, AFL-CIO.

4. AT THE HEARING IN THIS MATTER, THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THESE DOCUMENTS. AT THE OUTSET OF THE INQUIRY THE CHAIRMAN READ ALOUD THE ENGLISH PREAMBLE, AND THEN ADVISED THE PARTIES THAT THE ITALIAN PREAMBLE APPEARED TO BE SUBSTANTIALLY THE SAME AS THE ENGLISH ONE. NO OBJECTION WAS RAISED AS TO THIS. THE BOARD THEN PROCEEDED WITH ITS INQUIRY. NO WITNESS WAS ASKED TO TRANSLATE THE ITALIAN PREAMBLE, NOR WAS ANY TRANSLATION OFFERED TO THE BOARD.
5. AFTER ALL THE EVIDENCE WAS IN, COUNSEL FOR THE RESPONDENT, IN ARGUMENT, URGED THAT THE PETITIONS BE GIVEN NO WEIGHT, SINCE THE MEANING OF THE ITALIAN PREAMBLE HAD NOT BEEN ESTABLISHED. IT WAS COUNSEL'S CONTENTION THAT A TRANSLATION WAS NECESSARY, SO THAT THE BOARD MIGHT BE SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAD VOLUNTARILY SIGNIFIED IN WRITING THEIR DESIRE NO LONGER TO BE REPRESENTED BY THE TRADE UNION.
6. WE AGREE WITH THE CONTENTION OF COUNSEL FOR THE RESPONDENT THAT ANY WORDING APPEARING IN ANOTHER LANGUAGE UPON A PETITION OUGHT TO BE TRANSLATED INTO ENGLISH. OTHERWISE THE BOARD COULD NOT BE SATISFIED THAT THE DOCUMENT DID NOT CONTAIN THREATS OR PROMISES BY WHICH THE SIGNATORIES MIGHT HAVE BEEN INFLUENCED. IT MAY PROPERLY BE OBSERVED THAT IN THE INSTANT CASE IT WAS POINTED OUT TO THE PARTIES THAT THE ITALIAN PREAMBLE APPEARED TO BE SUBSTANTIALLY IDENTICAL TO THE ENGLISH.

ALL PARTIES WERE, AS IS THE BOARD'S PRACTICE, ADVISED OF THE WORDING OF THE PETITIONS (BOTH ENGLISH AND ITALIAN) PRIOR TO THE HEARING OF THIS MATTER.

7. IT IS CLEAR THAT THE ITALIAN PREAMBLE TO THE PETITIONS MUST BE TRANSLATED INTO ENGLISH BEFORE ANY DETERMINATION AS TO THE WEIGHT TO BE GIVEN TO THE PETITIONS CAN BE MADE. WE DO NOT ACCEPT THE CONTENTION OF COUNSEL FOR THE RESPONDENT THAT THE OBJECTORS HAVE FAILED TO PROVE THEIR CASE, INASMUCH AS THE BOARD ITSELF CONDUCTS THE INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS IN QUESTION. IT IS TRUE THAT IT IS THE RESPONSIBILITY OF THOSE OBJECTING TO THE APPLICATION TO PRESENT TO THE BOARD WITNESSES WHO CAN FULLY ACCOUNT FOR ANY DOCUMENTS IN SUPPORT OF THEIR OBJECTION, BUT THAT WAS DONE IN THE INSTANT CASE. IN THE INSTANT CASE THE ONLY OUTSTANDING QUESTION (APART FROM OUR DETERMINATION AS TO THE WEIGHT TO BE GIVEN TO THE PETITIONS) IS AS TO THE MEANING OF THE ITALIAN PREAMBLE TO THE PETITIONS.

8. IN THESE CIRCUMSTANCES IT IS OUR OPINION THAT THE PROPER COURSE IS FOR THE BOARD TO DIRECT THE TRANSLATION OF THE ITALIAN PREAMBLE TO THE DOCUMENTS BEFORE US, SUBJECT TO THE RIGHT OF THE PARTIES TO RAISE ANY ISSUE AS TO THE ACCURACY OF THE TRANSLATION. SINCE THE MATERIAL IN THE ITALIAN LANGUAGE IS ALREADY BEFORE THE BOARD, THE QUESTION IS MERELY ONE OF TRANSLATION, AND THERE CAN BE NO PREJUDICE TO ANY OF THE PARTIES AS A RESULT OF THIS PROCEDURE. THIS IS PARTICULARLY SO IN THE LIGHT OF THE CIRCUMSTANCES DESCRIBED ABOVE.

9. THE REGISTRAR IS DIRECTED TO OBTAIN A TRANSLATION OF THE MATERIAL IN THE ITALIAN LANGUAGE SET OUT IN PARAGRAPH 3 ABOVE, AND TO FORWARD COPIES OF SUCH TRANSLATION TO THE PARTIES.

13511-67-R: NICODEMO MAMMOLA (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT) V. VILLAGE CONTRACTORS (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: LLOYD CADSBY FOR THE APPLICANT, R. KOSKIE AND T. NEIL FOR THE RESPONDENT, F. R. VON VEM AND T. MASCARIN FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 19, 1967.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. IN SUPPORT OF HIS APPLICATION, THE APPLICANT, NICODEMO MAMMOLA, FILED A DOCUMENT (HEREAFTER REFERRED TO AS THE PETITION) BEARING THE



SIGNATURES OF TWENTY PERSONS PURPORTING TO BE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT. IF THE BOARD WERE TO GIVE WEIGHT TO THE PETITION THE APPLICANT WOULD ESTABLISH AN ENTITLEMENT TO THE TAKING OF A REPRESENTATION VOTE AMONG THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT.

3. THE EVIDENCE IS THAT SOME TIME IN EARLY MARCH OF 1966, THE RESPONDENT MADE AN APPLICATION TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES WITH WHICH WE ARE CONCERNED IN THE INSTANT APPLICATION. ON MARCH 14TH, 1966 THE BRICKLAYERS, MASONS' INDEPENDENT UNION OF CANADA, LOCAL #1 (HEREAFTER REFERRED TO AS LOCAL #1) FILED AN INTERVENER'S APPLICATION FOR CERTIFICATION OVER THE SIGNATURE OF JOHN MEIORIN, THE SECRETARY-TREASURER OF LOCAL #1, FOR THE SAME UNIT OF EMPLOYEES.

4. ON MARCH 28TH, 1966, WHILE THE APPLICATION OF THE RESPONDENT WAS STILL PENDING BEFORE THE BOARD, LOCAL #1 ENTERED INTO A COLLECTIVE AGREEMENT WITH THE MASONRY CONTRACTORS' ASSOCIATION (HEREAFTER REFERRED TO AS THE ASSOCIATION). TIBERIO MASCARIN, THE PRINCIPAL OF THE INTERVENER, WAS ONE OF THE SIGNATORIES TO THE AGREEMENT ON BEHALF OF THE ASSOCIATION. NEEDLESS TO SAY, THE INTERVENER WAS A MEMBER OF THE ASSOCIATION AT THAT TIME AND HAS CONTINUED TO BE A MEMBER TO THE PRESENT.

5. THE DURATION CLAUSE PROVIDED THAT THE ABOVE COLLECTIVE AGREEMENT WAS TO BE EFFECTIVE FROM MARCH 28TH, 1966 UNTIL APRIL 30TH, 1967. BY THE TERMS OF THE AGREEMENT "THE EMPLOYER" AGREED TO EMPLOY ONLY MEMBERS OF LOCAL #1 EXCEPT WHEN THE UNION COULD NOT SUPPLY THE REQUIRED LABOUR. IN THAT EVENT "THE EMPLOYER" COULD HIRE SUCH LABOUR AS WAS AVAILABLE ON THE PROVISIO THAT THE PERSONS SO EMPLOYED JOINED LOCAL #1 WITHIN FIFTEEN DAYS OF HIRING. THE AGREEMENT ALSO PROVIDED FOR THE PAYMENT OF A TEN CENT AN HOUR CONTRIBUTION BY "THE EMPLOYER", FOR EACH OF HIS EMPLOYEES, OVER AND ABOVE THE SPECIFIED HOURLY WAGE, TO A HEALTH AND WELFARE FUND, WHICH, ACCORDING TO THE EVIDENCE, WAS ADMINISTERED BY LOCAL #1 FOR THE BENEFIT OF ITS MEMBERS.

6. UPON THE EXECUTION OF THE COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND LOCAL #1, IN ACCORDANCE WITH THE CHECK-OFF PROVISION, THE INTERVENER PROCEEDED TO DEDUCT FROM THE WAGES OF ITS EMPLOYEES MONTHLY MEMBERSHIP DUES WHICH WERE REMITTED TO LOCAL #1. AS WELL, THE INTERVENER COMMENCED TO CONTRIBUTE TO THE HEALTH AND WELFARE PLAN OF LOCAL #1 AS PROVIDED FOR IN THE AGREEMENT.

7. ON OCTOBER 13TH, 1966, THE BOARD ISSUED A CERTIFICATE CERTIFYING THE RESPONDENT AS BARGAINING AGENT FOR THE EMPLOYEES OF THE INTERVENER. THE RESPONDENT THEREUPON GAVE NOTICE TO THE INTERVENER OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. IT APPEARS THAT A COUPLE OF MEETINGS WERE HELD BETWEEN THE PARTIES IN THE FALL OF 1966. IN ANY EVENT, CONCILIATION SERVICES WERE GRANTED TO THE RESPONDENT AND THE INTERVENER ON MAY 5TH, 1967. BY LETTER DATED JULY 7TH, 1967, THE



MINISTER ADVISED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

8. ON APRIL 26TH, 1967, BETWEEN THE TIME THAT THE RESPONDENT GAVE NOTICE TO THE INTERVENER OF ITS DESIRE TO BARGAIN AND THE GRANTING OF CONCILIATION SERVICES, LOCAL #1 AND THE ASSOCIATION ENTERED INTO A NEW COLLECTIVE AGREEMENT COVERING ALL LABOURERS IN THE TORONTO AREA, EFFECTIVE FROM MAY 1ST, 1967 TO APRIL 30TH, 1969. TIBERIO MASCARIN, THE PRINCIPAL OF THE INTERVENER, AGAIN WAS ONE OF THE SIGNATORIES TO THE AGREEMENT ON BEHALF OF THE ASSOCIATION. EVER SINCE THIS SECOND AGREEMENT WAS EXECUTED THE INTERVENER HAS CONTINUED TO DEDUCT MONTHLY MEMBERSHIP DUES FROM ITS EMPLOYEES AND REMIT THEM TO LOCAL #1. THE INTERVENER HAS ALSO CONTINUED TO CONTRIBUTE IN THE SAME MANNER TO THE HEALTH AND WELFARE PLAN OF LOCAL #1.

9. THE EVIDENCE OF JOHN MEIORIN AND OF THE APPLICANT MAMMOLA AND OF ANOTHER EMPLOYEE OF THE INTERVENER, MARIO PANNELLA, IS THAT FROM TIME TO TIME, SINCE THE RESPONDENT WAS CERTIFIED, WHEN MEIORIN VISITED THE JOB SITES ON WHICH THE EMPLOYEES OF THE INTERVENER WERE WORKING, CONVERSATIONS TOOK PLACE BETWEEN MEIORIN AND EMPLOYEES OF THE INTERVENER CONCERNING THE POSSIBILITY OF HAVING THE BARGAINING RIGHTS OF THE RESPONDENT TERMINATED. ACCORDING TO THE TESTIMONY OF MAMMOLA, ON MEIORIN'S SUGGESTION, HE (MAMMOLA) VOLUNTEERED TO BE THE APPLICANT IN ANY APPLICATION THAT WAS MADE TO THE BOARD TO ACHIEVE THIS END.

10. MEIORIN'S EVIDENCE IS THAT HE SECURED THE ASSISTANCE OF A LAWYER, WHO HE COULD NOT IDENTIFY BY NAME, IN MAY OF THIS YEAR. ON THE ADVICE OF THE LAWYER MEIORIN PREPARED AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT. IN ADDITION, UNDER THE DIRECTION OF THE LAWYER, HE PREPARED AN ORIGINAL AND FOUR TYPEWRITTEN CARBON COPIES OF A DOCUMENT EXPRESSING SUPPORT FOR THE APPLICATION. MEIORIN TESTIFIED THAT HE THEREUPON TELEPHONED EACH OF THE EMPLOYEES OF THE INTERVENER AND REQUESTED THAT THEY ATTEND AT THE OFFICE OF LOCAL #1 TO SIGN THE DOCUMENTS IN SUPPORT OF THE APPLICATION. MEIORIN'S EVIDENCE IS THAT ALL OF THE EMPLOYEES OF THE INTERVENER, WHO ATTENDED AT THE OFFICE OF LOCAL #1 UPON HIS REQUEST, SIGNED THE ORIGINAL AND ALL FOUR COPIES OF THE DOCUMENT. MAMMOLA AND PANNELLA'S TESTIMONY IS CONFIRMATORY OF THAT OF MEIORIN'S. MAMMOLA STATED THAT HE EXECUTED THE ORIGINAL AND THREE COPIES OF THE APPLICATION ITSELF AS WELL AS THE SUPPORTING DOCUMENT. THIS APPLICATION, WHICH WAS FILED BY MEIORIN, WAS FOUND BY THE BOARD TO BE UNTIMELY AND WAS DISMISSED ON JUNE 12TH, 1967.

11. THE EVIDENCE IS THAT SOME TIME IN JULY, MEIORIN WAS INFORMED BY MASCARIN OF THE MINISTER'S LETTER OF JULY 7TH ADVISING THE PARTIES THAT HE WAS NOT APPOINTING A CONCILIATION BOARD. EARLY IN AUGUST, ACCORDING TO MEIORIN, HE THEN PREPARED ANOTHER APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND AN ORIGINAL AND FOUR COPIES OF A DOCUMENT EXPRESSING SUPPORT FOR THE APPLICATION WHICH WERE IDENTICAL TO THE DOCUMENTS SUBMITTED IN SUPPORT OF THE PREVIOUS APPLICATION.

MEIORIN FOLLOWED THE SAME PROCEDURE AS IN THE EARLIER APPLICATION. THAT IS, HE TELEPHONED THE EMPLOYEES OF THE INTERVENER AND REQUESTED THEM TO ATTEND AT THE OFFICE OF LOCAL #1. THOSE WHO CAME TO THE OFFICE SIGNED THE ORIGINAL AND FOUR COPIES OF THE PETITION AND MAMMOLA, WHO AGAIN WAS NAMED AS THE APPLICANT, SIGNED THE APPLICATION, WHICH WAS FILED WITH THE BOARD BY MEIORIN. IT IS THIS APPLICATION AND THE SUPPORTING PETITION WHICH IS BEFORE THE BOARD IN THE INSTANT CASE.

12. ACCORDING TO THE EVIDENCE OF MEIORIN, MAMMOLA AND PANNELLA, ALL OF THE SIGNATURES APPEARING BOTH ON THE PETITION FILED IN SUPPORT OF THE INSTANT APPLICATION AND THE PREVIOUS APPLICATION WERE SECURED IN THE OFFICES OF LOCAL #1 WHEN THE EMPLOYEES WERE ON THEIR OWN TIME. ALL OF THE WITNESSES TESTIFIED THAT THEY HAD NO DISCUSSION WITH ANY MEMBER OF MANAGEMENT OF THE INTERVENER CONCERNING EITHER OF THE APPLICATIONS TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT. HAVING REGARD, HOWEVER, TO THE EVIDENCE OF THE SEQUENCE OF EVENTS WHICH LED TO THE INSTANT APPLICATION, CAN IT TRULY BE SAID THAT THE INTERVENER PLAYED NO ROLE IN THE ORIGINATION OF THE INSTANT APPLICATION AND SUPPORTING PETITION?

13. THE INTERVENER, NOTWITHSTANDING THE FACT THAT THE RESPONDENT HAD AN APPLICATION BEFORE THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR HIS EMPLOYEES, DELIBERATELY CHOSE TO RECOGNIZE LOCAL #1 AS BARGAINING AGENT FOR THE SAME EMPLOYEES WHO WERE THE SUBJECT OF THE RESPONDENT'S APPLICATION. FURTHER, THE INTERVENER CHOSE TO TREAT THE COLLECTIVE AGREEMENT ENTERED INTO BY LOCAL #1 AND THE ASSOCIATION ON MARCH 28TH, 1966 AS BEING BINDING UPON ITSELF AND LOCAL #1. THIS, OF COURSE, INVOLVED COMPLIANCE WITH THE WAGE, CHECK-OFF, UNION SECURITY AND WELFARE BENEFIT PROVISIONS OF THE AGREEMENT. MOREOVER, THE INTERVENER'S TOTAL ADHERENCE TO THE ASSOCIATION AGREEMENT CONTINUED EVEN AFTER THE BOARD ISSUED A CERTIFICATE ON OCTOBER 13TH, 1966, CERTIFYING THE RESPONDENT AS BARGAINING AGENT FOR THE EMPLOYEES OF THE INTERVENER. WE WOULD ADD AS A MATTER OF RECORD THAT ACCORDING TO AN INTERIM DECISION OF THE BOARD IN THE RESPONDENT'S CERTIFICATION APPLICATION, DATED JULY 7TH, 1966, THE INTERVENER DROPPED THE PLEA THAT THE COLLECTIVE AGREEMENT BETWEEN LOCAL #1 AND THE ASSOCIATION WAS A BAR TO THE RESPONDENT'S APPLICATION. FINALLY, DESPITE THE BOARD'S CERTIFICATION OF THE RESPONDENT AND SOME CONSIDERABLE TIME AFTER THE RESPONDENT HAD GIVEN NOTICE TO THE INTERVENER OF ITS DESIRE TO BARGAIN BUT BEFORE THE CONCILIATION PROVISIONS OF THE ACT WERE EVEN UTILIZED, THE INTERVENER EMBRACED A SECOND COLLECTIVE AGREEMENT ENTERED INTO BY LOCAL #1 AND THE ASSOCIATION ON APRIL 26TH, 1967.

14. STATED IN OTHER TERMS, NOTWITHSTANDING THE RESPONDENT'S APPLICATION FOR CERTIFICATION OR THE BOARD'S SUBSEQUENT FINDING THAT THE RESPONDENT REPRESENTED OVER FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE INTERVENER AS OF THE DATE OF THE APPLICATION OR THE RESPONDENT'S ENSUING CERTIFICATION AS BARGAINING AGENT FOR THE INTERVENER'S EMPLOYEES, THE INTERVENER POINTEDLY AND CONSISTENTLY INSISTED ON RECOGNIZING LOCAL #1 AS BARGAINING AGENT FOR ITS EMPLOYEES. IN SO DOING, THE INTERVENER HAS IGNORED AND, IN EFFECT, DENIED THE EXISTENCE OF THE BARGAINING RIGHTS HELD BY THE RESPONDENT.

15. IN LIGHT OF THE CONDUCT OF THE INTERVENER, ITS EMPLOYEES COULD NOT HELP BEING FULLY AWARE, NOT ONLY OF THE PREFERENCE OF THEIR EMPLOYER THAT LOCAL #1 REPRESENT THEM BUT ALSO OF THE COMPLETE UNACCEPTABILITY TO THE INTERVENER OF THE RESPONDENT TO BARGAIN ON THEIR BEHALF. IT WAS IN THIS ENVIRONMENT THAT AN OFFICIAL OF LOCAL #1, JOHN MEIORIN, PREPARED THE APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND WHO PREPARED AND SECURED THE SIGNATURES ON THE SUPPORTING PETITION. ON THE EVIDENCE, MOREOVER, WE FIND THAT MEIORIN, AT THE LEAST, ENCOURAGED THE INITIATION OF BOTH THIS AND THE PRECEDING APPLICATION.

16. IT IS SIGNIFICANT, WE WOULD ADD, THAT THE WHOLE "IDEA" OF TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT GREW OUT OF CONVERSATIONS BETWEEN MEIORIN AND EMPLOYEES OF THE INTERVENER WHEN HE VISITED WITH THEM ON JOB SITES DURING THEIR WORKING HOURS. IT MUST HAVE APPEARED, AT LEAST TO THE EMPLOYEES, THAT MEIORIN'S READY ACCESS TO THE JOB SITES WAS WITH THE CONCURRENCE AND PERMISSION OF THEIR EMPLOYER. AS A MATTER OF FACT, THE ASSOCIATION AGREEMENTS UNDER WHICH THE INTERVENER WAS OPERATING PROVIDE THAT THE BUSINESS AGENT OF THE UNION SHALL HAVE ACCESS TO ALL JOBS DURING WORKING HOURS, SUBJECT ONLY TO THE QUALIFICATION THAT HE DOES NOT INTERFERE WITH THE PROGRESS OF THE WORK AND ADVISES THE SUPERVISORY PERSONNEL OF THE EMPLOYER IN ADVANCE OF HIS VISITS. IN THESE CIRCUMSTANCES, THE EMPLOYEES WOULD HAVE GOOD REASON TO TAKE FOR GRANTED THAT MEIORIN'S ENDEAVOURS TO HAVE THE BARGAINING RIGHTS OF THE RESPONDENT TERMINATED, AT THE MINIMUM, HAD THE TACIT SUPPORT OF THEIR EMPLOYER. INDEED, HAVING REGARD TO THE INTERVENER'S MEMBERSHIP IN AND COMPLIANCE WITH THE ASSOCIATION AGREEMENT, IT WOULD NOT BE UNREASONABLE FOR THEM TO ASSUME EVEN MORE POSITIVE SUPPORT OF MEIORIN BY THEIR EMPLOYER. MOREOVER, IT WOULD BE LOGICAL FOR THE INTERVENER'S EMPLOYEES TO CONJECTURE AS TO WHETHER THEIR SUPPORT OR NON-SUPPORT OF THE INSTANT OR PREVIOUS APPLICATION WOULD BECOME KNOWN TO THEIR EMPLOYER. FOR CLEARLY, THE INTERVENER'S ACTIONS FOR NEARLY THE PAST YEAR AND A HALF HAVE BEEN CALCULATED TO ALIENATE ITS EMPLOYEES FROM THE RESPONDENT, A FACT WHICH COULD NOT HAVE TOTALLY ESCAPED THEIR NOTICE.

17. IN CONCLUSION, HAVING REGARD TO ALL THE CIRCUMSTANCES, WE FIND THAT THE INTERVENER, WITH DELIBERATE INTENT, ATTEMPTED TO SO INFLUENCE ITS EMPLOYEES AGAINST THE RESPONDENT THAT WE ARE NOT PREPARED TO ACCEPT THE PETITION FILED IN SUPPORT OF THE APPLICATION AS REPRESENTING A VOLUNTARY EXPRESSION OF THEIR TRUE WISHES. IN MAKING THIS FINDING WE ARE NOT UNMINDFUL OF THE POSSIBLE DILEMMA CONFRONTING THE EMPLOYEES OF THE INTERVENER. WE WOULD POINT OUT, HOWEVER, THAT THE PRESENT SITUATION IS THE DIRECT RESULT OF THEIR EMPLOYER AND LOCAL #1 ENTERING INTO A COLLECTIVE BARGAINING RELATIONSHIP IN THE FACE OF AN APPLICATION AND THE SUBSEQUENT CERTIFICATION OF THE RESPONDENT BY THIS BOARD AS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE INTERVENER CONCERNED IN THIS APPLICATION.

18. THE APPLICATION IS DISMISSED.



13617-67-R: UNIQUE WINDOW CLEANING HAROLD LANDON (APPLICANT) V.  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 847 (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: HAROLD LANDON FOR THE APPLICANT  
AND W. W. TILLER FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 22, 1967.

1. THE BOARD FINDS THAT UNIQUE WINDOW CLEANING ENTERED INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT ON THE 12TH DAY OF NOVEMBER, 1966. THE AGREEMENT IS EFFECTIVE AS AND FROM NOVEMBER 1ST, 1966 TO THE 31ST DAY OF OCTOBER, 1969. IN VIEW OF THIS AGREEMENT AND WITH REFERENCE TO SECTION 43(2) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THIS APPLICATION TO BE UNTIMELY.

2. THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

13586-67-U: TORONTO PLASTERING COMPANY LTD (APPLICANT) V. LATHERS  
INTERNATIONAL UNION, LOCAL 97 (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: R. B. POTTER FOR THE APPLICANT AND  
R. KOSKIE FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 13, 1967.

1. THIS IS AN APPLICATION FOR DECLARATION THAT A STRIKE WAS UNLAWFUL.

2. THE RESPONDENT AT THE HEARING RAISED A PRELIMINARY OBJECTION TO THIS APPLICATION ON THE BASIS THAT THE APPLICANT HAD NO STATUS TO MAKE AN APPLICATION SINCE THE APPLICANT WAS NOT THE EMPLOYER OF THE EMPLOYEES INVOLVED. FOR THE PURPOSES OF ARGUMENT RELATING TO THIS OBJECTION, THE PARTIES AGREED TO THE FOLLOWING FACTS:

(A) THE EMPLOYEES INVOLVED WERE EMPLOYEES OF  
GEMINI LATHING CONTRACTORS LTD. AND MOREL  
CONTRACTORS COMPANY AND WERE NOT EMPLOYEES  
OF THE APPLICANT.

(B) THERE WAS AN UNLAWFUL STRIKE.



(C) NEITHER GEMINI LATHING CONTRACTORS LTD.  
NOR MOREL CONTRACTORS COMPANY WERE SUB-  
CONTRACTORS OF THE APPLICANT.

3. THE RELEVANT SECTION OF THE LABOUR RELATIONS ACT IS SECTION  
67 STATED AS FOLLOWS:

"WHERE A TRADE UNION OR COUNCIL OF  
TRADE UNIONS CALLS OR AUTHORIZES A STRIKE  
OR EMPLOYEES ENGAGE IN A STRIKE THAT THE  
EMPLOYER OR EMPLOYERS' ORGANIZATION CONCERNED  
ALLEGES WAS OR IS UNLAWFUL, THE EMPLOYER OR  
EMPLOYERS' ORGANIZATION MAY APPLY TO THE  
BOARD FOR A DECLARATION THAT THE STRIKE WAS  
OR IS UNLAWFUL, AND THE BOARD MAY MAKE SUCH  
DECLARATION. R.S.O. 1960, c. 202, s. 67".

WHILE THE SECTION READS THAT INTER ALIA "THE EMPLOYER OR EMPLOYERS'  
ORGANIZATION MAY APPLY TO THE BOARD FOR A DECLARATION" COUNSEL FOR THE  
APPLICANT ARGUED THAT THE KEY WORD IN INTERPRETING THE SECTION WAS  
"CONCERNED". COUNSEL FOR THE APPLICANT STATED THAT THE APPLICANT WAS  
DENIED WORK BECAUSE THE EMPLOYEES OF THE TWO COMPANIES MENTIONED ABOVE  
WERE ON STRIKE AND HAD DONE SO WITH THE INTENTION OF PREVENTING THE  
APPLICANT'S EMPLOYEES FROM WORKING ON A PARTICULAR SITE. THUS, HE  
ARGUED THE APPLICANT, ALTHOUGH IT WAS NOT THE EMPLOYER OF THE EMPLOYEES  
ENGAGED IN THE STRIKE, WAS CONCERNED AS A RESULT OF THE STRIKE AND THIS  
FACTOR BY ITSELF SHOULD ENTITLE THE APPLICANT TO THE RELIEF REQUESTED.

4. THE BOARD IS BOUND BY THE WORDING OF THE LABOUR RELATIONS ACT  
AND CANNOT VARY ANY OF ITS PROVISIONS PARTICULARLY WHERE THEY ARE  
QUITE CLEARLY SET OUT. THE BOARD INTERPRETS THIS SECTION TO MEAN,  
THAT IN ORDER TO QUALIFY FOR THE REMEDY, THE APPLICANT MUST BE THE  
EMPLOYER OF THE EMPLOYEES ALLEGED TO BE ON STRIKE. THIS SECTION MUST  
BE READ AS A WHOLE AS IT STANDS AND OTHER WORDS CANNOT BE SUBSTITUTED  
IN ORDER TO VARY ITS MEANING TO SUIT A PARTICULAR SITUATION SUCH AS IN  
THE INSTANT CASE. IF THE LEGISLATURE HAD INTENDED TO PROVIDE RELIEF  
TO PARTIES OTHER THAN THOSE WHO HAD AN EMPLOYER/EMPLOYEE RELATIONSHIP,  
IT WOULD HAVE DONE SO IN CLEAR AND UNAMBIGUOUS LANGUAGE IN THE ACT.  
SEE FOR REFERENCE KING SHOPPING PLAZA CASE, O.L.R.B., MONTHLY REPORT,  
MAY 1963, P. 115.

5. THE BOARD, THEREFORE, FINDS THAT THE APPLICANT IS NOT THE  
EMPLOYER OF THE EMPLOYEES CONCERNED AND THE APPLICANT DOES NOT BRING  
ITSELF WITHIN THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - PROSECUTION

13432-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. QUEENSWAY  
GENERAL HOSPITAL (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT HEARING: J. OSLER, Q.C., AND MRS. V. CHOMYSHYN  
FOR THE APPLICANT, WARREN K. WINKLER AND W.D. McCUAIG FOR THE  
RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 11, 1967.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 50(c) OF THE LABOUR RELATIONS ACT.
  2. THE APPLICANT ALSO FILED A COMPLAINT PURSUANT TO SECTION 65 OF THE ACT (BOARD FILE NO. 13399-67-U) ALLEGING A VIOLATION OF THE SAME SECTION OF THE ACT. THE MATERIAL FACTS ALLEGED RELATING TO THE INSTANT APPLICATION AND THE ABOVE COMPLAINT ARE IDENTICAL AND THE PARTIES AGREED AT THE HEARING THAT THE EVIDENCE ADDUCED WITH RESPECT TO THE COMPLAINT WOULD BE APPLIED BY THE BOARD TO THIS APPLICATION.
  3. THE BOARD IN ITS DECISION IN THE COMPLAINT (WHICH WAS CONSOLIDATED WITH TWO OTHER COMPLAINTS MADE BY THE APPLICANT, BOARD FILE NOS. 13378-67-U AND 13413-67-U) ISSUED A DIRECTION THAT THE RESPONDENT REFRAIN FROM ANY CONDUCT WHICH, WITHIN THE MEANING OF THE LABOUR RELATIONS ACT, UNDULY INFLUENCES ITS EMPLOYEES OR INTERFERES WITH THEIR RIGHT TO CHOOSE A TRADE UNION AS THEIR AGENT TO BARGAIN WITH THE RESPONDENT ON THEIR BEHALF.
  4. IN ALL THE CIRCUMSTANCES OF THE INSTANT CASE, INCLUDING THE FACT THAT THE BOARD HAS GRANTED TO THE APPLICANT THE REMEDY WHICH IT WAS SEEKING IN THE COMPLAINT, WE ARE OF THE OPINION THAT IT WOULD NOT SERVE THE BEST INTERESTS OF THE APPLICANT IN ITS RELATIONS WITH THE RESPONDENT TO GRANT TO THE APPLICANT LEAVE TO PROSECUTE THE RESPONDENT.
  5. THE APPLICATION ACCORDINGLY IS DISMISSED.
- (SEE ALSO FILES NOS. 13433-67-U, AND 13434-67-U).

INDEXED ENDORSEMENTS - SECTION 65

12823-66-U: WALTER URBANOWICZ (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, LOCAL 120 W. A. NICHOLLS AND FRED TURNER  
(RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT HEARING: WALTER URBANOWICZ FOR THE COMPLAINANT, AARON BROWN, J. A. SHIRKIE, FRED TURNER AND W. A. NICHOLLS FOR THE RESPONDENTS.

DECISION OF THE BOARD: SEPTEMBER 5, 1967.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, WHEREIN THE COMPLAINANT HAS ALLEGED THAT THE RESPONDENTS REFUSED TO ALLOW THE COMPLAINANT TO WRITE THE UNION ENTRANCE EXAMINATIONS IN ORDER THAT THE COMPLAINANT BE ENABLED TO JOIN THE RESPONDENT UNION AND THEREBY PREVENTING HIM FOR PERFORMING AVAILABLE WORK AND ALSO THAT THE RESPONDENTS PREVENTED HIM FROM COLLECTING WELFARE BENEFITS FOR WHICH HE HAD PAID, THEREBY DISCRIMINATING AGAINST HIM.

2. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 120, AND W. A. NICHOLLS (THE BUSINESS MANAGER OF THE UNION) AND FRED TURNER (AN OFFICER OF THE UNION AND THE ADMINISTRATOR OF THE WELFARE FUND), THE RESPONDENTS IN THIS MATTER, DENIED THE COMPLAINANT'S ALLEGATIONS AND IN ADDITION TOOK THE POSITION THAT THE BOARD DID NOT HAVE JURISDICTION TO DEAL WITH THE MATTER UNDER SECTION 65 OF THE ACT.

3. THIS MATTER CAME ON FOR HEARING AT LONDON ON AUGUST 11TH, 1967, SINCE THIS WAS THE FIRST INSTANCE IN WHICH A COMPLAINT HAD BEEN MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE ACT, WHEREIN THE COMPLAINANT HAD ALLEGED THAT A UNION HAD WRONGLY REFUSED THE COMPLAINANT MEMBERSHIP, THE PARTIES, AT THE BOARD'S REQUEST, ASSUMED FOR THE PURPOSE OF DEALING WITH THE ISSUE OF THE BOARD'S JURISDICTION TO ENTERTAIN THIS COMPLAINT, THAT THE FACTS ALLEGED BY THE COMPLAINANT WERE ALL THE FACTS IN THIS CASE. IF THE BOARD DETERMINES THAT IT HAS JURISDICTION IN THIS CASE, THIS MATTER WILL BE LISTED FOR CONTINUATION OF HEARING IN ORDER THAT THE COMPLAINANT WILL HAVE THE OPPORTUNITY TO PRESENT ALL HIS EVIDENCE TO ESTABLISH THE FACTS WHICH HE HAS ALLEGED AND WHICH THE BOARD HAS ASUMED ARE THE FACTS FOR THE PURPOSE OF MAKING THIS DECISION.

4. A SUMMARY OF THE FACTS ALLEGED BY THE COMPLAINANT MAY BE BRIEFLY STATED AS FOLLOWS. THE COMPLAINANT IS A "CERTIFIED MASTER ELECTRICIAN" IN THE CITY OF LONDON AND IS ALSO REGISTERED WITH THE ONTARIO DEPARTMENT OF LABOUR AS A JOURNEYMAN ELECTRICIAN. FOR A PERIOD OF APPROXIMATELY SIX YEARS, THE COMPLAINANT HAS ATTEMPTED TO BECOME A MEMBER OF THE RESPONDENT UNION AND IN THAT TIME HAS WORKED AT HIS TRADE FOR SEVERAL EMPLOYERS BY OBTAINING "REFERRAL SLIPS" FROM THE RESPONDENT UNION. WHILE WORKING UNDER THE AUTHORITY OF THE REFERRAL SLIPS HE IS KNOWN AS A "PERMIT MAN" AND IS REQUIRED BY THE UNION TO PAY \$1.00 A DAY AS UNION DUES IN ORDER TO WORK. THE EMPLOYER ALSO PAYS ON HIS BEHALF TWENTY CENTS PER HOUR TO THE UNION WELFARE FUND FOR WELFARE BENEFITS. THE COMPLAINANT ALLEGED THAT HE IS ONLY ONE OF SOME 150 TO 200 EMPLOYEES WHO ARE REPRESENTED BY THE RESPONDENT UNION WHO HAVE A SIMILAR COMPLAINT AGAINST THE RESPONDENTS. THE COMPLAINANT FURTHER ALLEGED THAT THE PERMIT MEN WERE NOT ALLOWED TO SHARE IN AVAILABLE OVERTIME WHICH WAS GIVEN TO UNION MEMBERS, NOR WERE THEY GIVEN FULL WELFARE BENEFITS WHICH A UNION MEMBER WOULD RECEIVE.



5. THE COMPLAINANT ALSO ALLEGED THAT IN JANUARY, 1966, HE RECEIVED, THROUGH HIS EMPLOYER, A NOTICE FROM THE UNION IN THE FOLLOWING TERMS:

TO ALL PROBATIONARY MEMBERS

YOU ARE HEREBY REQUESTED TO ATTEND AN EXAMINATION TO DETERMINE IF YOU HAVE THE QUALIFICATIONS TO BECOME A MEMBER OF LOCAL UNION 120. THE EXAMINATION WILL BE HELD AT THE PROVINCIAL TRADES SCHOOL ON OXFORD STREET. YOU ARE REQUESTED TO BE AT THE SCHOOL AT 8.30 SHARP ON SATURDAY JANUARY 21, 1967. YOU WILL NOT BE ALLOWED TO USE ANY TYPE OF BOOK.

PLEASE SEND YOUR NAME, ADDRESS AND TELEPHONE NUMBER ON A PIECE OF PAPER TO:  
W.A. NICHOLLS, LOCAL UNION 120, I.B.E.W.,  
300 OAKLAND AVE., LONDON, ONTARIO, BEFORE ANY  
JANUARY 18, 1967.

HOPE YOU MAKE IT.

W.A. NICHOLLS  
BUSINESS MANAGER  
L.U.120, I.B.E.W.  
LONDON

6. ON JANUARY 16TH, 1967, THE COMPLAINANT WROTE TO W. A. NICHOLLS, THE BUSINESS MANAGER OF THE RESPONDENT UNION, AND ADVISED HIM OF HIS NAME, ADDRESS AND TELEPHONE NUMBER IN COMPLIANCE WITH THE NOTICE CONCERNING THE EXAMINATION TO BECOME A MEMBER OF LOCAL UNION 120.

7. ON JANUARY 21ST, 1967, THE COMPLAINANT ATTENDED AT THE PROVINCIAL TRADES SCHOOL ON OXFORD STREET, LONDON, PRIOR TO 8:30 A.M. AND PRESENTED HIMSELF FOR THE EXAMINATION. MR. NICHOLLS CALLED HIM ASIDE AND TOLD HIM HE COULD NOT WRITE THE EXAMINATION. WHEN THE COMPLAINANT ATTEMPTED TO SPEAK TO THE PERSON IN CHARGE OF THE EXAMINATION MR. NICHOLLS THREATENED HIM AND PHYSICALLY REMOVED HIM FROM THE EXAMINATION ROOM AND HE WAS NOT PERMITTED TO WRITE THE EXAMINATION.

8. AT THE HEARING, THE COMPLAINANT ARGUED THAT THE FACTS SET OUT ABOVE ESTABLISHED THAT THE RESPONDENTS HAD CONTRAVENED SECTION 52 OF THE LABOUR RELATIONS ACT AND THAT HE IS THEREFORE ENTITLED TO THE RELIEF AFFORDED BY SECTION 65 OF THE ACT.

9. SECTION 52 OF THE ACT READS AS FOLLOWS:

NO PERSON, TRADE UNION OR EMPLOYERS' ORGANIZATION SHALL SEEK BY INTIMIDATION OR COERCION TO COMPEL ANY PERSON TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION



OR OF AN EMPLOYERS' ORGANIZATION OR TO REFRAIN FROM EXERCISING ANY OTHER RIGHTS UNDER THIS ACT OR FROM PERFORMING ANY OBLIGATIONS UNDER THIS ACT.

10. THE COMPLAINANT ARGUED THAT SINCE AN OFFICER OF THE UNION HAD THREATENED HIM AND PHYSICALLY PREVENTED HIM FROM WRITING THE UNION'S ENTRANCE EXAMINATION, HE WAS THEREBY INTIMIDATED AND COERCED BY THE UNION AND COMPELLED TO REFRAIN FROM BECOMING A MEMBER OF THE TRADE UNION.

11. THE RESPONDENTS ARGUED THAT SECTION 52 WAS NOT INTENDED TO PROVIDE A REMEDY IN THE CIRCUMSTANCES OF THIS CASE. THE RESPONDENTS TOOK THE POSITION THAT THERE IS NOTHING IN THE LABOUR RELATIONS ACT WHICH CAN COMPEL A TRADE UNION TO TAKE A PERSON INTO MEMBERSHIP WHEN THE TRADE UNION DOES NOT WISH TO DO SO. IT WAS THE RESPONDENTS POSITION THAT THE COMPLAINANT WAS NOT A PROPER CANDIDATE FOR THE UNION ENTRANCE EXAMINATION AND THAT ITS DECISION IN THIS RESPECT IS NOT OPEN TO CHALLENGE.

12. THE ACTIVITY USUALLY DEALT WITH UNDER SECTION 52 OF THE ACT IS ACTIVITY ON THE PART OF AN EMPLOYER WHO DOES NOT WISH HIS EMPLOYEES TO BECOME UNION MEMBERS. IN ADDITION SECTION 52 IS INTENDED TO PROTECT AN EMPLOYEE FROM PRESSURE BY ONE UNION WHICH TENDS TO PREVENT THE EMPLOYEE FROM BECOMING A MEMBER OF ANOTHER UNION. HOWEVER, WHILE IT IS NOT USUALLY NECESSARY FOR A PERSON TO INVOKE SECTION 52 OF THE ACT BECAUSE OF THE CONDUCT OF THE UNION, AS ALLEGED IN THIS CASE, IT IS THE OPINION OF THE BOARD THAT THE WORDING OF SECTION 52 AFFORDS THE COMPLAINANT THE PROTECTION HE IS SEEKING. TO GIVE ANY OTHER INTERPRETATION TO SECTION 52 OF THE ACT WOULD BE TO DISTORT THE LITERAL MEANING OF THE WORDS USED IN THE SECTION.

13. WHILE THE BOARD RECOGNIZES THAT THE ISSUANCE OF WORK PERMITS IS A COMMON PRACTICE IN THE ELECTRICAL CONSTRUCTION INDUSTRY, NOT ONLY WITH THE RESPONDENT UNION BUT WITH OTHER UNIONS, THE PRACTICE OF ISSUING WORK PERMITS SHOULD NOT BE ABUSED TO THE DETRIMENT OF PERSONS WHO WISH TO JOIN THE UNION. IF A UNION IS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES EACH AND EVERY EMPLOYEE REPRESENTED BY THE BARGAINING AGENT MUST BE AFFORDED AN EQUAL OPPORTUNITY TO JOIN THE UNION WHICH REPRESENTS HIM, IF HE SO DESIRES.

14. THE ISSUANCE OF WORK PERMITS IS AN ACCEPTABLE PRACTICE AS FOR EXAMPLE WHERE AN EMPLOYEE TEMPORARILY TRANSFERS FROM ONE LOCAL OF A TRADE UNION TO THE TERRITORIAL JURISDICTION OF ANOTHER LOCAL. THE ISSUANCE OF DAILY WORK PERMITS IN SUCH A CASE FACILITATES THE MOBILITY OF THE WORK FORCE. IN SUCH A CASE, THE MEMBER OF ONE LOCAL IS NOT COMPELLED TO BECOME A MEMBER OF ANOTHER LOCAL AND THEREBY BE SUBJECT TO THE INITIATION FEE AND THE DUPLICATION OF MONTHLY DUES. HOWEVER, THE PRACTICE OF ISSUING WORK PERMITS IS ABUSED WHEN IT IS USED FOR THE PURPOSE OF PREVENTING EMPLOYEES FROM BECOMING MEMBERS OF THE UNION WHICH REPRESENTS THE BARGAINING UNIT IN WHICH THE EMPLOYEES ARE EMPLOYED.

15. IF THERE IS A CONSTITUTIONAL PROHIBITION AGAINST THE ADMITTANCE INTO MEMBERSHIP OF AN EMPLOYEE REPRESENTED BY A UNION, THE CONSTITUTIONAL PROHIBITION WOULD ACCORDINGLY DEPRIVE THE UNION OF THE RIGHT TO REPRESENT THE BARGAINING UNIT IN WHICH THE PERSON IS EMPLOYED. IN THIS REGARD, SEE GAYMER & OULTRAM CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17,073, C.L.S. 76-429. IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, BOARD FILE NO. 12779-66-R THE BOARD IN ITS DECISION OF AUGUST 29TH, 1967 STATED IN PART AS FOLLOWS:

"...A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES.

...WE HASTEN TO ADD, HOWEVER, THAT IF IT SHOULD SUBSEQUENTLY COME TO LIGHT THAT EMPLOYEES IN THE BARGAINING UNIT ARE NOT BEING ACCORDED FULL STATUS AS MEMBERS OF THE UNION, THEN, NATURALLY, THE BOARD WOULD HAVE TO REVIEW ITS DECISION IN THE PARTICULAR CASE AND WOULD BE OBLIGED TO TAKE THIS INTO ACCOUNT IN SUBSEQUENT CASES."

16. HAVING REGARD TO ALL THE FACTS THE BOARD HAS ASSUMED ARE THE FACTS FOR THE PURPOSE OF MAKING A DETERMINATION ON THE PRELIMINARY ISSUES OF THIS CASE, THE BOARD FINDS THAT IF THE COMPLAINANT CAN ESTABLISH THESE FACTS BY EVIDENCE, THE TRADE UNION AND ITS BUSINESS AGENT HAVE SOUGHT BY INTIMIDATION OR COERCION TO COMPEL THE COMPLAINANT TO REFRAIN FROM BECOMING A MEMBER OF THE TRADE UNION, WHICH ACTIVITY IS CONTRARY TO THE PROVISIONS OF SECTION 52 OF THE LABOUR RELATIONS ACT.

17. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING TO HEAR THE EVIDENCE OF THE PARTIES WITH RESPECT TO ALL THE ISSUES IN THIS CASE.

13305-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. G. W. MARTIN LUMBER LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: J. H. OSLER, Q.C., W. CHALMERS FOR THE APPLICANT AND G. W. MARTIN FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 14, 1967.

1. THIS IS A COMPLAINT FOR RELIEF MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSON MR. LYLE COUMBS, ON JUNE 23RD, 1967 WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE RESPONDENT DENIES THE COMPLAINT AND STATES THAT THE AGGRIEVED PERSON WAS JUSTIFIABLY DISCHARGED.
2. THE RESPONDENT IS ENGAGED IN THE LUMBER AND BUILDING MATERIAL SUPPLY INDUSTRY AND IN THIS CONNECTION OPERATES TWO SAWMILLS, AT ONE OF WHICH THE AGGRIEVED PERSON WAS EMPLOYED. THE EVIDENCE OF MR. COUMBS IS THAT HE WAS HIRED IN FEBRUARY, 1967 BY THE RESPONDENT AS A NIGHT WATCHMAN WHICH POSITION ALSO INCLUDED DUTIES OF LOADING TRUCKS WITH CHIPS DURING HIS SHIFT AND HE ALSO DROVE TRUCKS FOR HALF DAYS DURING THAT PERIOD. HE HELD THIS POSITION FOR ABOUT THREE MONTHS AND WAS THEN TRANSFERRED AT THE REQUEST OF THE RESPONDENT TO DRIVING A FRONT-END LOADER. HE SAID THAT HE HAD NOT BEEN CRITICISED FOR HIS WORK AS A NIGHT WATCHMAN BUT WHEN DRIVING THE LOADER HE HAD SOME DIFFICULTY IN KEEPING THE LOGS STRAIGHT ON THE LOADER AND HAD BEEN SPOKEN TO MORE THAN ONCE AS A RESULT OF THIS. HOWEVER, HE FELT THAT HE WAS DOING BETTER AT THE TIME OF HIS DISCHARGE. HE WAS HIRED AT THE RATE OF \$65.00 PER WEEK AND THE COMPANY SUPPLIED A HOUSE ON COMPANY PROPERTY FREE OF CHARGE WITH THE EXCEPTION OF THE PAYMENT FOR UTILITIES. HE SAID THAT ONE OF THE REASONS HE OBTAINED THE JOB WAS THAT HE WAS WILLING TO WORK OVERTIME AND BE AVAILABLE FOR WORK ON WEEKENDS.
3. MR. COUMBS TESTIFIED THAT ON THE SUNDAY PRIOR TO THE 24TH OF MAY HE ATTENDED A UNION MEETING IN BANCROFT WHICH WAS HIS FIRST CONTACT WITH THE UNION EXCEPT FOR SIGNING A MEMBERSHIP CARD SOMETIME BEFORE THAT MEETING AT HIS HOUSE. ON THE SUNDAY REFERRED TO, AFTER ATTENDING THE MEETING, HE CALLED UPON OTHER EMPLOYEES AT THEIR HOMES TO ATTEMPT TO PURSUADE THEM TO JOIN THE UNION AND UPON RETURNING TO THE MILL SPOKE TO OTHERS AT THE BUNK HOUSE ABOUT THE UNION. NEITHER HE NOR THE OTHERS WERE WORKING ON THAT DAY. ON THE MONDAY FOLLOWING, HE WAS APPROACHED BY MR. C. LINDSAY, A FOREMAN AND HIS IMMEDIATE SUPERVISOR, WHO SAID TO HIM THAT HE HAD HEARD THAT MR. COUMBS HAD BEEN TALKING UNION ON COMPANY TIME. WHEN MR. COUMBS ASKED HIM WHEN THIS WAS, MR. LINDSAY, REPLIED, SUNDAY AFTERNOON. SOME WEEKS LATER, MR. COUMBS WAS AGAIN APPROACHED BY MR. LINDSAY WHO SAID THAT HE HAD HEARD MR. COUMBS HAD BEEN TALKING TO A TRUCK DRIVER EMPLOYED BY THE RESPONDENT ABOUT THE UNION. MR. COUMBS DENIED KNOWLEDGE OF THIS CONVERSATION.
4. ON THE DATE OF HIS DISCHARGE, MR. COUMBS' EVIDENCE IS THAT WHEN HE WAS JUST STARTING HIS WORK ABOUT 6:45 A.M., MR. LINDSAY STOPPED HIM WHILE OPERATING HIS MACHINE AND TOLD HIM THAT HE WOULD HAVE TO LET HIM GO. MR. COUMBS ASKED WHY AND HE ANSWERED THAT HE HAD BEEN TOO ROUGH ON THE MACHINES. MR. COUMBS THEN SUGGESTED THAT THE REAL REASON FOR HIS DISCHARGE WAS THE UNION. MR. LINDSAY SAID TO HIM "I DIDN'T SAY THAT". MR. COUMBS THEN REQUESTED THE FOREMAN TO MAKE UP HIS TIME AND ALSO TO SPEAK TO MR. MARTIN. MR. COUMBS THEN SAID THAT MR. LINDSAY



HAD SAID TO HIM "YOU DON'T NEED TO BOTHER, IT WON'T DO YOU ANY GOOD". SUBSEQUENTLY, HOWEVER, MR. COUMBS DID SEE MR. MARTIN AND INQUIRED WHY HE WAS BEING DISCHARGED AND STATED THAT MR. MARTIN ANSWERED "YOU KNOW THE REASON AS WELL AS I DO" AND THAT MR. COUMBS FURTHER STATED "YES, BECAUSE OF THE UNION" AND THIS WAS FOLLOWED BY MR. MARTIN'S STATEMENT "THAT'S RIGHT, AND THERE WILL BE FIFTY MORE WITH YOU". MR. COUMBS FURTHER TESTIFIED THAT MR. MARTIN HAD SAID TO HIM THAT HE WAS PREPARED TO SHUT DOWN THE PLANT FOR A YEAR.

5. THE REPLY OF THE RESPONDENT WAS GIVEN FIRSTLY BY TESTIMONY OF MR. MACHARIE, A CONSTRUCTION MANAGER AND SECONDLY BY MR. C. LINDSAY, THE MILL FOREMAN. MR. MACHARIE'S EVIDENCE RELATED SOLELY TO AN INCIDENT REGARDING THE ALLEGED WRONGFUL USE BY MR. COUMBS AND ANOTHER EMPLOYEE OF SOME CONSTRUCTION MATERIAL OWNED BY THE RESPONDENT IN CONNECTION WITH THE HOMES OCCUPIED BY MR. COUMBS AND THE OTHER EMPLOYEE. MR. LINDSAY, HOWEVER, QUITE FRANKLY ADMITTED IN HIS TESTIMONY THAT AFTER HE HAD BEEN ADVISED OF THIS INCIDENT BY MR. MACHARIE HE MERELY ASKED MR. COUMBS TO MAKE SURE IN THE FUTURE TO ASK PERMISSION OF SOMEONE IN AUTHORITY BEFORE USING SUCH MATERIAL AND THE INCIDENT WAS NOT TREATED SERIOUSLY. MR. LINDSAY TESTIFIED THAT OTHER THAN AS MENTIONED ON THE DATE OF DISCHARGING MR. COUMBS, HE DENIED HAVING DISCUSSIONS WITH MR. COUMBS ABOUT UNION ACTIVITY, EITHER ABOUT THE UNION MEETING ON THE SUNDAY CONCERNED OR IN CONNECTION WITH THE TRUCK DRIVER. MR. LINDSAY STATED ON CROSS-EXAMINATION THAT IF THERE HAD BEEN SUCH DISCUSSIONS HE WOULD HAVE RECALLED THEM, BUT HE DIDN'T. HE CONFIRMED THE CONVERSATION THAT HE HAD WITH MR. COUMBS ON THE DATE OF DISCHARGE AND INDICATED THAT THE TESTIMONY GIVEN BY MR. COUMBS WAS CORRECT IN THIS RESPECT. HE SAID THAT HE HAD NOT BEEN SATISFIED WITH MR. COUMBS' WORK EITHER AS A NIGHT WATCHMAN OR AS A DRIVER AND HAD COMPLAINED TO MR. COUMBS ON OCCASION. THE NIGHT BEFORE THE DATE OF DISCHARGE HE HAD DISCUSSED WITH MR. MARTIN MR. COUMBS' POSITION AND MR. MARTIN HAD AGREED TO LET MR. COUMBS GO IF MR. LINDSAY SO DESIRED. MR. COUMBS STATED THAT AT THAT MEETING THERE HAD BEEN NO DISCUSSION ABOUT THE UNION, HOWEVER, HE DID STATE THAT HE HAD HEARD THE UNION WAS AROUND THE PLANT. HE STATED THAT HE ADVISED MR. COUMBS ON THE MORNING OF JUNE 23RD, THAT HE WOULD HAVE TO LET HIM GO AND HE ADMITTED THAT HE HAD NOT MADE ANY ARRANGEMENTS FOR THE REPLACEMENT OF MR. COUMBS FOR THAT JOB ON THAT DAY.

6. WHERE THERE IS CONFLICT IN THE TESTIMONY BETWEEN MR. COUMBS AND MR. LINDSAY, THE BOARD IS IMPELLED TO GIVE WEIGHT TO THE EVIDENCE OF MR. COUMBS. WE FIND IT INCONSISTENT WITH THE WHOLE EVIDENCE THAT MR. LINDSAY AND MR. MARTIN WOULD NOT HAVE KNOWN ABOUT SOME UNION ACTIVITY AT THE PLANT AND HAVE DISCUSSED IT TOGETHER AT SOME TIME PRIOR TO JUNE 23RD. IT IS NOTED THAT AN APPLICATION FOR CERTIFICATION WAS MADE BY THE COMPLAINANT WITH RESPECT TO THE RESPONDENT EMPLOYEES ON JUNE 22ND, THE DAY BEFORE MR. COUMBS WAS DISCHARGED. IT IS A REASONABLE ASSUMPTION THAT THE COMPLAINANT'S ORGANIZATIONAL CAMPAIGN AS SUPPORTED BY THE EVIDENCE OF MR. COUMBS TOOK PLACE DURING THE PERIOD PRIOR TO THAT DATE. IT IS DIFFICULT TO THINK THAT ONLY THE EMPLOYEES KNEW OF THE EXISTENCE OF SUCH A CAMPAIGN. IT IS ALSO SIGNIFICANT TO CONSIDER TIMING AND MANNER IN WHICH MR. COUMBS WAS



DISCHARGED WHICH WAS EARLY ON A FRIDAY MORNING AT THE BEGINNING OF HIS SHIFT, WITHOUT NOTICE, WITHOUT HIS DOCUMENTS AND PAY BEING READY AND WITHOUT ANY REPLACEMENT BEING ARRANGED TO TAKE OVER HIS JOB. MR. MARTIN'S STATEMENT TO MR. COUMBS IN CONNECTION WITH HIS REASON FOR DISCHARGING MR. COUMBS ON THAT DAY REMAINS UNCONTRADICTED IN THE EVIDENCE BEFORE THIS BOARD.

7. FROM ALL OF THE EVIDENCE PRESENTED AT THE HEARING, THE RESPONDENT'S CONDUCT IS ONLY CONSISTENT WHEN REVIEWED AGAINST THE BACKGROUND OF THE UNION'S ORGANIZING CAMPAIGN. THE INTENTION OF SUBSECTION (A) OF SECTION 50 OF THE LABOUR RELATIONS ACT IS TO PREVENT THE EMPLOYER FROM DISCHARGING OR OTHERWISE DISCRIMINATING AGAINST PERSONS BECAUSE OF UNION ACTIVITY. WHETHER OR NOT THE RESPONDENT KNEW THAT THE AGGRIEVED PERSON WAS A MEMBER OF THE COMPLAINANT UNION, WE ARE SATISFIED FROM THE EVIDENCE THAT THE ACTION BY THE RESPONDENT WAS TAKEN IN THE BELIEF THAT MR. COUMBS WAS A MEMBER OR SUPPORTER OF THE COMPLAINANT AND IN FACT MR. COUMBS WAS A MEMBER OF THE COMPLAINANT UNION AT THE TIME OF HIS DISCHARGE. THE COMPLAINANT HAS SATISFIED THE ONUS ON IT TO ESTABLISH THE CLAIM OF THE AGGRIEVED PERSON AND THE BOARD ACCORDINGLY FINDS THAT MR. LYLE COUMBS WAS DISCHARGED BY THE RESPONDENT IN CONTRAVENTION OF SUBSECTION (A) OF SECTION 50 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ADVISED THE BOARD THAT WHILE THE AGGRIEVED PERSON WAS ASKING TO BE REINSTATED IN THIS EMPLOYMENT HE WAS NOT CLAIMING COMPENSATION AS HE HAS BEEN WORKING ELSEWHERE SINCE THE DATE OF HIS DISCHARGE.

8. THE BOARD THEREFORE, DIRECTS THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY LYLE COUMBS TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE WAS RECEIVING AT THE TIME OF HIS DISCHARGE ON JUNE 23RD, 1967.

13378-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. QUEENSAY GENERAL HOSPITAL (RESPONDENT).

- AND -

13399-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT).

- AND -

13413-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT HEARING: J. OSLER, Q.C., A. RISELEY AND MRS. V. CHOMYSHYN FOR THE COMPLAINANT, W. K. WINKLER, W. D. MCCUAIG, J. B. STEELE AND DR. J. E. BREMNER FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 7, 1967.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS, MICHAEL BAKER-PEARCE, ANN CLIFFORD, BRENDA KEENAN AND WAYNE GOODSPEED, HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50(c) OF THE LABOUR RELATIONS ACT.

3. THE INCIDENTS RELATING TO EACH ONE OF THE AGGRIEVED PERSONS ARE ENTIRELY SEPARATE. THE BOARD ACCORDINGLY PROPOSES INITIALLY TO OUTLINE THE RELEVANT EVIDENCE REGARDING EACH OF THE AGGRIEVED PERSONS.

4. THE AGGRIEVED PERSON MICHAEL BAKER-PEARCE IS EMPLOYED BY THE RESPONDENT AS A SENIOR OR CHARGE TECHNICIAN. AT THE HEARING, COUNSEL FOR THE RESPONDENT SUBMITTED THAT BAKER-PEARCE EXERCISED MANAGERIAL RESPONSIBILITIES AND ACCORDINGLY THE BOARD WAS WITHOUT JURISDICTION TO ENTERTAIN THE COMPLAINT RELATING TO HIM. FOLLOWING ITS USUAL PRACTICE IN COMPLAINTS MADE PURSUANT TO SECTION 65 OF THE ACT, THE BOARD CALLED UPON THE PARTIES AT THE HEARING TO ADDUCE EVIDENCE AS TO BAKER-PEARCE'S DUTIES AND RESPONSIBILITIES. ON THE BASIS OF THE EVIDENCE ADDUCED, THE BOARD FINDS THAT MICHAEL BAKER-PEARCE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(b) OF THE ACT, AND THAT ACCORDINGLY THE BOARD HAS THE JURISDICTION TO DEAL WITH THE COMPLAINT RELATING TO HIM.

5. THE EVIDENCE OF BAKER-PEARCE IS THAT WHILE WORKING WITH DR. JOHN BREMNER WHO IS THE DIRECTOR OF LABORATORY SERVICES AND CHIEF PATHOLOGIST AT THE RESPONDENT HOSPITAL, DR. BREMNER AND HE FROM TIME TO TIME HAD DISCUSSIONS CONCERNING BAKER-PEARCE'S SALARY. ON ONE OCCASION IN DECEMBER OF LAST YEAR, ACCORDING TO BAKER-PEARCE, DR. BREMNER TOLD HIM THAT THE ADMINISTRATION OF THE HOSPITAL WAS ABANDONING ITS PRACTICE OF GIVING REGULAR ANNUAL INCREMENTS AT THE BEGINNING OF EACH YEAR AND THAT SALARY INCREASES WOULD HENCEFORTH BE GIVEN ON A MERIT BASIS. BAKER-PEARCE, IN FACT, DID RECEIVE A REGULAR SALARY INCREASE AT THE BEGINNING OF THIS YEAR. SUBSEQUENT TO RECEIVING THIS INCREASE, BAKER-PEARCE TESTIFIED THAT HE MENTIONED THE MATTER OF MERIT INCREASES TO DR. BREMNER, AND THAT THE DOCTOR ADVISED HIM TO RE-APPLY FOR A FURTHER INCREASE IN THREE MONTHS' TIME. BAKER-PEARCE'S EVIDENCE IS THAT AFTER THE PASSAGE OF THREE MONTHS DR. BREMNER INFORMED HIM THAT NOTHING COULD BE DONE TO INCREASE HIS SALARY AT THAT PARTICULAR TIME BUT THAT THE ADMINISTRATION OF THE HOSPITAL WAS NEGOTIATING WITH THE ONTARIO HOSPITAL SERVICES COMMISSION FOR AN INCREASE IN SALARIES FOR ALL OCCUPATIONAL CLASSIFICATIONS. ACCORDING TO BAKER-PEARCE, SOME TIME IN JUNE DR. BREMNER TOLD HIM THAT HE (THE DOCTOR) HAD HEARD ON GOOD AUTHORITY FROM THE PERSONNEL OFFICE THAT THE ONTARIO HOSPITAL SERVICES COMMISSION HAD APPROVED ADDITIONAL FUNDS FOR SALARY INCREASES WHICH WHEN ANNOUNCED WOULD BE RETROACTIVE TO JULY 1st, 1967 AND THAT THE SENIOR TECHNICIANS WOULD BE INCLUDED IN THE CLASSIFICATIONS RECEIVING AN INCREASE.

6. DR. BREMNER IN HIS TESTIMONY ADMITTED THAT FROM TIME TO TIME HE HAD HAD CASUAL DISCUSSIONS WITH BAKER-PEARCE CONCERNING SALARIES, BUT DENIED THAT HE HAD EVER SAID THAT THE REGULAR ANNUAL INCREMENTS GRANTED AT THE BEGINNING OF EACH YEAR WERE BEING DISCONTINUED AND REPLACED BY A SYSTEM OF MERIT INCREASES. HIS EVIDENCE IS THAT, IN FACT, THE SYSTEM OF REGULAR ANNUAL INCREASES IN SALARIES STILL PREVAILS

AT THE RESPONDENT HOSPITAL. DR. BREMNER TESTIFIED THAT HE HAD TOLD BAKER-PEARCE AND OTHER OF THE SENIOR TECHNICIANS THAT HE HAD MADE REPRESENTATIONS TO THE ADMINISTRATION OF THE HOSPITAL TO GET SALARY INCREASES FOR HIS STAFF WITH ENCOURAGING RESULTS AND THAT THE FINANCE COMMITTEE OF THE HOSPITAL WOULD BE CONSIDERING THE SUBJECT AT ITS NEXT MEETING. DR. BREMNER'S EVIDENCE IS THAT HE TOLD BAKER-PEARCE AND OTHERS THAT IF HIS PROPOSALS FOR SALARY INCREASES WERE ACCEPTED BY THE FINANCE COMMITTEE THE INCREASE WOULD BE RETROACTIVE TO JULY 1ST, 1967. AT THE TIME HE MADE THESE STATEMENTS TO MEMBERS OF HIS STAFF, HOWEVER, ACCORDING TO DR. BREMNER, HIS PROPOSAL HAD NOT BEEN ACCEPTED. HE FURTHER TESTIFIED THAT HE HAD NO AUTHORITY TO GRANT ANY SALARY INCREASES HIMSELF.

7. BAKER-PEARCE'S EVIDENCE IS THAT HE FIRST BECAME AWARE OF THE COMPLAINANT UNION'S ORGANIZING CAMPAIGN AMONG THE HOSPITAL EMPLOYEES IN JUNE WHEN HE OBSERVED UNION LEAFLETS BEING DISTRIBUTED OUTSIDE THE HOSPITAL. HIS TESTIMONY IS THAT A MRS. CHOMYSHYN AN ORGANIZER FOR THE COMPLAINANT UNION, SUBSEQUENTLY COMMUNICATED WITH HIM AND ATTENDED AT HIS HOME. ACCORDING TO BAKER-PEARCE, HE JOINED THE UNION. HE FURTHER TESTIFIED THAT HE SPOKE FAVOURABLY OF THE UNION TO HIS COLLEAGUES DURING LUNCH BREAKS AND INVITED OTHER OF THE TECHNICIANS TO ATTEND A UNION MEETING ON JULY 11TH.

8. BAKER-PEARCE TESTIFIED THAT ON JULY 12TH, HE HEARD RUMOURS TO THE EFFECT THAT THE SALARY INCREASES, WHICH HE UNDERSTOOD FROM DR. BREMNER WERE TO BE RETROACTIVE TO JULY 1ST, HAD BEEN CANCELLED AND THAT THE HOSPITAL ADMINISTRATION HAD PLACED A "FREEZE" ON ALL SALARIES FOR A PERIOD OF A YEAR. THAT AFTERNOON, ACCORDING TO BAKER-PEARCE, HE WENT TO THE OFFICE OF DR. BREMNER AND CALMLY TOLD HIM OF THE RUMOURS HE HAD HEARD AND ASKED FOR CONFIRMATION AS TO WHETHER THEY WERE TRUE. BAKER-PEARCE'S EVIDENCE IS THAT DR. BREMNER IMMEDIATELY ASKED HIM FROM WHOM HE HAD HEARD THE RUMOUR TO WHICH BAKER-PEARCE REPLIED THAT HE WAS NOT PREPARED TO DIVULGE THAT INFORMATION. BAKER-PEARCE'S TESTIMONY IS THAT DR. BREMNER BECAME ANGRY AND TOLD HIM THAT HE WAS DISCHARGED. WHEN BAKER-PEARCE ASKED THE REASON, DR. BREMNER REPLIED THAT IT WAS BECAUSE OF BAKER-PEARCE'S GROSS INSUBORDINATION. BAKER-PEARCE TESTIFIED THAT HE ONCE MORE QUERIED DR. BREMNER CONCERNING THE RUMOURS TO WHICH THE DOCTOR REPLIED THAT IF HE DID NOT LIKE IT, HE COULD GET OUT AND THAT HE WAS DISCHARGED AS OF THEN. UPON AGAIN ASKING THE REASON, ACCORDING TO BAKER-PEARCE, DR. BREMNER SAID THAT IT WAS BECAUSE OF WHAT BAKER-PEARCE HAD DONE IN GETTING THE UNION MEETING TOGETHER AND HIS PARTICIPATION IN THE UNION'S ORGANIZING CAMPAIGN. BAKER-PEARCE TESTIFIED THAT DR. BREMNER THEN TOLD HIM THAT HE AND THE ADMINISTRATION HAD AGREED TO CANCEL THE SALARY RAISES THAT WERE TO BECOME EFFECTIVE RETROACTIVE TO JULY 1ST AND THAT A WAGE "FREEZE WAS BEING PUT ON THE LABORATORY FOR A YEAR. ACCORDING TO BAKER-PEARCE, THE DOCTOR ALSO TOLD HIM ON THAT OCCASION THAT BECAUSE HE HAD JOINED THE UNION HIS EFFECTIVENESS AS A LABORATORY TECHNICIAN WAS NEGLIGIBLE AND THAT HE WOULD END UP STANDING ALONE AS THE UNION PEOPLE WOULD RUN AWAY AND THE OTHER LABORATORY TECHNICIANS WOULD TURN AGAINST HIM. BAKER-PEARCE RETURNED



TO HIS JOB AND HAS REMAINED THERE AND NO ACTION HAS BEEN TAKEN AGAINST HIM BY THE RESPONDENT.

9. DR. BREMNER TESTIFIED THAT ON JULY 13TH OR 14TH, HE HAD A CONVERSATION WITH BAKER-PEARCE. THE CIRCUMSTANCES AND NATURE OF THE CONVERSATION ARE NOT CLEAR FROM THE DOCTOR'S EVIDENCE; HOWEVER, HE TESTIFIED THAT ON THAT OCCASION, BAKER-PEARCE HAD SAID TO HIM THAT THE UNION WAS GOING TO TAKE CARE OF SALARY INCREASES. DR. BREMNER'S EVIDENCE IS THAT HE WAS AWARE OF THE UNION'S ORGANIZING CAMPAIGN HAVING OBSERVED LEAFLETS BEING DISTRIBUTED OUTSIDE THE HOSPITAL AND THAT EMPLOYEES ON HIS STAFF HAD SOUGHT HIS ADVICE CONCERNING THE UNION. HE FURTHER TESTIFIED THAT SOME TIME AFTER THE CONVERSATION WITH BAKER-PEARCE, REFERRED TO ABOVE, THE DOCTOR SAID TO THE SENIOR TECHNOLOGIST THAT IF THE UNION WAS GOING TO LOOK AFTER THE BARGAINING FOR SALARY INCREASES, HE WAS NOT GOING TO GO TO THE ADMINISTRATION ABOUT THEM. HIS EVIDENCE IS THAT HE OPENLY MADE THIS REMARK IN THE LABORATORY WHEN OTHER EMPLOYEES WERE PRESENT BUT THAT HE DID NOT KNOW WHETHER ANYONE ELSE HEARD HIS STATEMENT.

10. DR. BREMNER ORIGINALLY TESTIFIED THAT BAKER-PEARCE CAME TO HIS OFFICE ON JULY 20TH. WHEN CONFRONTED WITH THE FACT THAT THE COMPLAINT REGARDING BAKER-PEARCE HAD BEEN MADE ON JULY 17TH, HE ADMITTED THAT HIS MEETING IN HIS OFFICE WITH BAKER-PEARCE MUST HAVE OCCURRED AT AN EARLIER DATE. HE INSISTED, HOWEVER, THAT BAKER-PEARCE'S REMARK CONCERNING THE UNION LOOKING AFTER SALARY INCREASES HAD BEEN MADE ON A PRIOR OCCASION. WHATEVER THE DATE, ACCORDING TO DR. BREMNER, WHEN BAKER-PEARCE CAME INTO HIS OFFICE, IN AN ANGRY VOICE, HE DEMANDED TO KNOW ON WHOSE AUTHORITY THE SALARY INCREASES HAD BEEN "SCRAPPED". ACCORDING TO DR. BREMNER HE REPLIED TO BAKER-PEARCE THAT IF HE SPOKE IN THAT MANNER HE WOULD BE DISMISSED. THE DOCTOR TESTIFIED THAT BAKER-PEARCE THEN SAID THAT HE WAS A CARD CARRYING MEMBER OF THE UNION TO WHICH DR. BREMNER SAID HE DID NOT CARE AND REMINDED BAKER-PEARCE OF THE OCCASION WHEN HE HAD SAID THAT THE UNION WAS GOING TO TAKE CARE OF WAGE INCREASES AND THAT THE DOCTOR WOULD NOT HAVE TO BOTHER DOING SO. ACCORDING TO DR. BREMNER, BAKER-PEARCE LEFT HIS OFFICE AND RETURNED TO HIS JOB AND THAT NO DISCIPLINARY ACTION OF ANY SORT HAS BEEN TAKEN AGAINST HIM.

11. THE AGGRIEVED PERSON WAYNE GOODSPEED IS EMPLOYED AT THE RESPONDENT HOSPITAL AS AN ORDERLY. GOODSPEED TESTIFIED THAT HE WAS SUMMONED TO THE OFFICE OF WALTER McCUAIG, THE PERSONNEL DIRECTOR OF THE HOSPITAL, ON THE AFTERNOON OF JULY 19TH. ACCORDING TO GOODSPEED, McCUAIG, AFTER STATING THAT GOODSPEED HAD A GOOD WORK RECORD, WENT ON TO SAY THAT HE (McCUAIG) UNDERSTOOD THAT GOODSPEED HAD BEEN SOLICITING SUPPORT FOR THE COMPLAINANT UNION AND HE ADVISED GOODSPEED THAT TO DO SO ON THE RESPONDENT'S PREMISES WAS ILLEGAL. GOODSPEED'S EVIDENCE IS THAT HE TOLD McCUAIG THAT IT WAS HIS (GOODSPEED'S) UNDERSTANDING THAT HE WAS FREE TO SOLICIT THE SUPPORT OF EMPLOYEES FOR THE UNION DURING HIS LUNCH PERIOD, FOR WHICH HE WAS NOT PAID, SO LONG AS THE EMPLOYEES TO WHOM HE APPROACHED ALSO WERE NOT ON THEIR WORKING HOURS. GOODSPEED TESTIFIED THAT HE DENIED THAT HE HAD SOLICITED SUPPORT FOR THE UNION



EXCEPT IN THESE CIRCUMSTANCES. ACCORDING TO GOODSPEED, McCUAIG ADVISED HIM THAT HE WAS NOT TO SOLICIT SUPPORT FOR THE UNION EITHER ORALLY OR BY DISTRIBUTING WRITTEN MATERIAL WHILE HE WAS ON THE<sup>1</sup> PREMISES OF THE RESPONDENT, OTHERWISE HE (GOODSPEED) WAS SUBJECT TO BEING RELEASED FROM HIS EMPLOYMENT WITHOUT FURTHER NOTICE.

12. THE EVIDENCE OF McCUAIG IS THAT HE HAD RECEIVED COMPLAINTS FROM MEMBERS OF THE SUPERVISORY STAFF THAT GOODSPEED WAS SOLICITING SUPPORT FOR THE COMPLAINANT UNION AMONG THE EMPLOYEES DURING WORKING HOURS. AT HIS MEETING WITH GOODSPEED ON JULY 19TH, ACCORDING TO THE EVIDENCE OF McCUAIG, HE TOLD GOODSPEED THAT WHAT HE DID ON HIS OWN TIME AND OFF THE RESPONDENT'S PREMISES WAS OF NO CONCERN TO THE RESPONDENT. McCUAIG TESTIFIED THAT HE WENT ON TO SAY, HOWEVER, THAT WHAT GOODSPEED DID ON THE RESPONDENT'S PREMISES DURING WORKING HOURS DID CONCERN THE RESPONDENT. THE EVIDENCE OF McCUAIG IS THAT GOODSPEED STATED THAT HE HAD ONLY BEEN SOLICITING SUPPORT FOR THE UNION DURING HIS LUNCH PERIOD, FOR WHICH HE WAS NOT PAID, AND ONLY APPROACHED PERSONS WHO WERE ALSO ON BREAK PERIODS. McCUAIG'S TESTIMONY IS THAT HE CAUTIONED GOODSPEED ABOUT SOLICITING SUPPORT FOR THE UNION ON HOSPITAL PREMISES DURING WORKING HOURS AND WARNED HIM THAT ANY SUBSEQUENT REPORTS OF HIM SO DOING WOULD MAKE HIM SUBJECT TO DISCIPLINARY ACTION. NO DISCIPLINARY ACTION, IN FACT, WAS TAKEN AGAINST GOODSPEED.

13. THE AGGRIEVED PERSON ANN CLIFFORD IS EMPLOYED BY THE RESPONDENT HOSPITAL AS A KITCHEN HELPER. HER EVIDENCE IS THAT ONE EVENING MRS. CHOMYSHYN AND TWO EMPLOYEES ATTENDED AT HER (MISS CLIFFORD'S) HOME. ON THAT OCCASION MRS. CHOMYSHYN PRODUCED A LIST OF NAMES OF EMPLOYEES ON THE KITCHEN STAFF AND THEIR TELEPHONE NUMBERS. AT THE REQUEST OF MRS. CHOMYSHYN, MISS CLIFFORD AND THE TWO OTHER EMPLOYEES TELEPHONED THE PERSONS ON THE LIST FOR THE PURPOSE OF SECURING THEIR ADDRESSES AND AT THE SAME TIME ASKED EACH OF THEM IF MRS. CHOMYSHYN COULD VISIT THEM AT THEIR HOMES TO TALK ABOUT THE UNION.

14. MISS CLIFFORD STATED THAT ON JULY 13TH SHE WAS SUMMONED TO THE OFFICE OF THE FOOD SERVICE MANAGER, MR. STEELE. SHE TESTIFIED THAT ON THAT OCCASION MR. STEELE ASKED HER WHERE SHE HAD SECURED THE UNLISTED TELEPHONE NUMBERS OF EMPLOYEES WHOSE NAMES WERE ON A LIST. ACCORDING TO MISS CLIFFORD, SHE EXPLAINED ABOUT THE MEETING WITH MRS. CHOMYSHYN AT HER HOME AND INFORMED HIM THAT SHE DID NOW KNOW HOW THE TELEPHONE NUMBERS HAD BEEN OBTAINED OR THAT SOME OF THEM WERE UNLISTED NUMBERS. STEELE AT THAT POINT TOLD HER HE DID NOT WANT HER TO GET MIXED UP IN THE UNION "BUSINESS" AND INFORMED HER THAT MRS. CHOMYSHYN COULD HAVE BEEN ARRESTED FOR GETTING THE UNLISTED TELEPHONE NUMBERS OF EMPLOYEES AND GOING TO THEIR HOMES. ACCORDING TO MISS CLIFFORD, STEELE WENT ON TO SAY THAT IF THE UNION GOT INTO THE HOSPITAL THE SALARY SHE WAS CURRENTLY BEING PAID WOULD BE LOWERED AND THAT SHE ALSO WOULD HAVE TO PAY UNION DUES.

15. THE AGGRIEVED PERSON BRENDA KEENAN ALSO IS EMPLOYED BY THE RESPONDENT AS A KITCHEN HELPER. HER EVIDENCE IS THAT MR. STEELE CALLED HER INTO HIS OFFICE ON JULY 14TH. HE THEREUPON ASKED HER IF

SHE HAD ANY IMPORTANT PAPERS IN HER LOCKER TO WHICH SHE REPLIED IN THE AFFIRMATIVE. MRS. KEENAN TESTIFIED THAT UPON HIS REQUEST SHE BROUGHT TO HIM SOME CAMPAIGN LITERATURE AND NOTICES OF A UNION MEETING WHICH WERE IN HER LOCKER AND THAT HE KEPT THIS MATERIAL. MRS. KEENAN'S EVIDENCE IS THAT STEELE TOLD HER THAT SHE SHOULD NOT BE DISTRIBUTING SUCH MATERIAL AROUND THE HOSPITAL. SHE DENIED DISTRIBUTING ANY MATERIAL AROUND THE HOSPITAL. ACCORDING TO MRS. KEENAN, STEELE TOLD HER THAT SINCE SHE WAS YOUNG AND DID NOT KNOW TOO MUCH ABOUT THE UNION HE WOULD NOT DISCHARGE HER OR TAKE ANY ACTIONS AGAINST HER. HE FURTHER INSTRUCTED HER THAT IF SHE HEARD ANYTHING MORE ABOUT THE UNION THAT SHE WAS TO REPORT IT TO HIM.

16. THE COMPLAINANT SUBMITS THAT THE ABOVE OUTLINED CONDUCT OF THE NAMED MEMBERS OF THE MANAGEMENT OF THE RESPONDENT HOSPITAL CONSTITUTES A VIOLATION OF SECTION 50(C) OF THE ACT. THE REMEDY WHICH THE COMPLAINANT IS SEEKING IS A DIRECTION BY THE BOARD REQUIRING THE RESPONDENT TO REFRAIN FROM ANY FURTHER UNLAWFUL INTERFERENCE WITH THE ORGANIZATIONAL CAMPAIGN BEING CONDUCTED BY THE COMPLAINANT.

17. THE SECTION OF THE ACT WHICH THE COMPLAINANT ALLEGES HAS BEEN VIOLATED BY THE RESPONDENT READS:

50. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION,

(C) SHALL SEEK BY THREAT OF DISMISSAL, OR BY ANY OTHER KIND OF THREAT, OR BY THE IMPOSITION OF A PECUNIARY OR OTHER PENALTY, OR BY ANY OTHER MEANS TO COMPEL AN EMPLOYEE TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OR OFFICER OR REPRESENTATIVE OF A TRADE UNION OR TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT.

18. THE EVIDENCE OF MISS CLIFFORD AND MRS. KEENAN IS UNCONTRADICTED, STEELE NOT BEING CALLED AS A WITNESS IN THIS PROCEEDING. THE BOARD ACCORDINGLY HAS NO HESITATION IN ACCEPTING THEIR EVIDENCE AT FACE VALUE. ON THE BASIS OF THEIR EVIDENCE, WE FIND THAT STEELE, WITH DELIBERATE INTENT, ATTEMPTED BY THREATS AND INTIMIDATION TO CAUSE BOTH MISS CLIFFORD AND MRS. KEENAN TO WITHDRAW THEIR SUPPORT OF THE COMPLAINANT UNION AND TO CEASE THEIR ACTIVITIES ON BEHALF OF THE UNION. MOREOVER, IN THE CASE OF MRS. KEENAN, STEELE ENDEAVOURED TO ENLIST HER ASSISTANCE AGAINST THE COMPLAINANT. WE ACCORDINGLY FIND THAT STEELE'S CONDUCT CONSTITUTED A CLEAR VIOLATION OF SECTION 50(C) OF THE LABOUR RELATIONS ACT.

19. WE COME NOW TO A CONSIDERATION OF THE CONDUCT OF DR. BREMNER. FIRST OF ALL, WE FIND ON THE EVIDENCE THAT DR. BREMNER NEITHER HAD THE AUTHORITY NOR WAS HE RESPONSIBLE FOR THE CANCELLATION OF ANY SALARY INCREASES OR FOR A WAGE "FREEZE", ASSUMING, BUT WITHOUT SO FINDING, THAT THE RESPONDENT HAD, IN FACT, TAKEN SUCH ACTION. IF, HOWEVER, THE BOARD WERE TO ACCEPT BAKER-PEARCE'S EVIDENCE THAT DR. BREMNER THREATENED BAKER-PEARCE'S DISCHARGE BECAUSE OF HIS UNION ACTIVITIES, THERE CAN BE NO QUESTION THAT DR. BREMNER CONTRAVENED THE PROVISIONS OF SECTION 50(c) OF THE ACT. ON THE OTHER HAND, IF THE BOARD WERE TO ACCEPT THE VERY DIFFERENT TESTIMONY OF DR. BREMNER, IT WOULD NOT APPEAR THAT HE DID VIOLATE THE ACT.

20. SIMILARLY, WHETHER OR NOT McCUAIG VIOLATED SECTION 50(c) DEPENDS ON WHOSE EVIDENCE THE BOARD ACCEPTS. IF WE WERE TO ACCEPT McCUAIG'S ACCOUNT OF HIS CONVERSATION WITH GOODSPEED, IN LIGHT OF SECTION 53, WHICH SPECIFICALLY EXEMPTS THE SOLICITING OF UNION SUPPORT AMONG EMPLOYEES DURING WORKING HOURS FROM THE PROTECTION OF THE ACT, McCUAIG'S WARNING TO GOODSPEED, THAT ANY UNION ACTIVITY ON HIS PART ON THE RESPONDENT'S PREMISES DURING WORKING HOURS WOULD RESULT IN DISCIPLINARY ACTION, DOES NOT CONSTITUTE A VIOLATION OF THE ACT. SHOULD WE, HOWEVER, ACCEPT GOODSPEED'S TESTIMONY THAT McCUAIG THREATENED HIM WITH DISCHARGE IF HE SOLICITED SUPPORT FOR THE COMPLAINANT UNION ON THE RESPONDENT'S PREMISES, WITHOUT ANY QUALIFICATION REGARDING WORKING HOURS, THEN IN OUR OPINION, McCUAIG DID CONTRAVENE SECTION 50(c) OF THE ACT.

21. THE BOARD DOES NOT FEEL CALLED UPON NOR DOES IT PROPOSE TO MAKE ANY DETERMINATION ON THE ISSUES OF CREDIBILITY ARISING OUT OF THE CONFLICTS IN THE TESTIMONY RELATING TO THE COMPLAINTS FILED ON BEHALF OF BAKER-PEARCE AND GOODSPEED. IN OUR VIEW, HOWEVER, IT IS BOTH TIMELY AND RELEVANT TO EMPHASIZE THE FACT THAT UNDER THE LABOUR RELATIONS ACT EMPLOYEES ARE FREE TO JOIN A TRADE UNION OF THEIR OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES. FURTHER, THE ACT SPECIFICALLY FORBIDS AN EMPLOYER FROM INTERFERING IN THE SELECTION OF A TRADE UNION BY THEIR EMPLOYEES. IT IS APPROPRIATE HERE TO QUOTE A PASSAGE FROM THE DECISION MADE IN THE PIGOTT MOTORS (1961) LIMITED CASE (1962) 63 C.L.L.C. 1125, C.L.S. 76-903, IN WHICH THE BOARD COMMENTED ON THE POSITION OF AN EMPLOYEE V/S-A-VIS HIS EMPLOYER IN THE FOLLOWING TERMS:

IN VIEW OF THE RESPONSIVE NATURE OF HIS  
RELATIONSHIP WITH HIS EMPLOYER, AND OF HIS  
NATURAL DESIRE TO WANT TO APPEAR TO IDENTIFY  
HIMSELF WITH THE INTERESTS AND WISHES OF HIS  
EMPLOYER, AN EMPLOYEE IS OBVIOUSLY PECULIARLY  
VULNERABLE TO INFLUENCES, OBVIOUS OR DEVIOUS,  
WHICH MAY OPERATE TO IMPAIR OR DESTROY THE  
FREE EXERCISE OF HIS RIGHTS UNDER THE ACT.

THEREFORE, WHILE UNDER THE ACT AN EMPLOYER HAS THE RIGHT TO EXPRESS HIS VIEWS, HAVING REGARD TO HIS "SENSITIVE" RELATIONSHIP WITH HIS EMPLOYEES,



THE CONDUCT OF AN EMPLOYER MUST BE CIRCUMSPECT AND RESTRAINED DURING AN ORGANIZING CAMPAIGN BY A TRADE UNION AMONG HIS EMPLOYEES. A FAILURE ON THE PART OF AN EMPLOYER TO EXERCISE REASONABLE DISCRETION MAY WELL LEAD TO CONDUCT WHICH CONSTITUTES EITHER INTERFERENCE WITH THE RIGHTS OF HIS EMPLOYEES OR UNDUE INFLUENCE OVER THEM, IN CONTRAVENTION OF THE ACT.

22. THE EVIDENCE RELATING TO THE ACTIONS OF STEELE IN THIS CASE IS AN EXAMPLE OF THE TYPE OF CONDUCT BY AN EMPLOYER WHICH THE ACT IS DESIGNED TO PREVENT AND WHICH THE BOARD DOES NOT CONDONE. IT IS PRECISELY THIS REASON, THEREFORE, THAT THE BOARD IS OF THE OPINION THAT THE COMPLAINANT IS ENTITLED TO THE REMEDY WHICH IT IS SEEKING.

23. ACCORDINGLY, THE BOARD DIRECTS THAT THE RESPONDENT FORTHWITH REFRAIN FROM ANY CONDUCT WHICH, WITHIN THE MEANING OF THE LABOUR RELATIONS ACT, UNDULY INFLUENCES ITS EMPLOYEES OR INTERFERES WITH THEIR RIGHT TO CHOOSE A TRADE UNION AS THEIR AGENT TO BARGAIN WITH THE RESPONDENT ON THEIR BEHALF.

13405-67-U: H. K. FISCHER (COMPLAINANT) V. THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS AND LOCAL 128 OF THAT UNION AND PROCOR LTD. (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 15TH, 1967.

1. ON JULY 11TH, 1967, THE BOARD RECEIVED A LETTER FROM THE COMPLAINANT IN THIS MATTER. A NUMBER OF EXHIBITS ACCOMPANIED THE LETTER. AFTER CONSIDERING THE MATERIAL FILED, THE BOARD DECIDED THAT, ALTHOUGH THE PROPER BOARD FORMS HAD NOT BEEN USED, IT WOULD TREAT THE MATERIAL FILED AS CONSTITUTING A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. ACCORDINGLY, ON JULY 21ST, 1967, MR. J. M. FLANNERY, FIELD OFFICER, WAS AUTHORIZED TO INQUIRE INTO THE COMPLAINT. MR. FLANNERY WAS INSTRUCTED TO MEET WITH THE COMPLAINANT AND TO ADVISE HIM THAT IF IT WAS HIS INTENTION TO PROCEED FURTHER WITH THE MATTER IT WOULD BE NECESSARY TO FILE THE PROPER COMPLAINT FORM WITH THE BOARD.

2. ON AUGUST 16TH MR. FLANNERY MET WITH THE COMPLAINANT AND WAS ADVISED THAT IT WAS THE INTENTION OF THE COMPLAINANT TO PROCEED WITH THE COMPLAINT. ACCORDINGLY, MR. FLANNERY PROVIDED THE COMPLAINANT WITH THE PROPER FORMS. SUBSEQUENTLY, ON SEPTEMBER 1ST MR. FLANNERY WROTE THE COMPLAINANT AND REQUESTED HIM TO FORWARD THE APPROPRIATE FORMS AS SOON AS POSSIBLE IF IT WAS HIS INTENTION TO PROCEED WITH HIS COMPLAINTS. AS OF THE DATE OF THIS DECISION THE COMPLAINANT HAS NOT COMMUNICATED WITH MR. FLANNERY OR THE BOARD.

3. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE COMPLAINT IS HEREBY DISMISSED.



INDEXED ENDORSEMENT - SECTION 79A

13471-67-M: LOCAL #949, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (TRADE UNION) V. RUSS CONSTRUCTION (LONDON) LIMITED (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: T. E. ARMSTRONG, I. LONGAN AND T. G. HARKNESS  
FOR THE TRADE UNION, AND CLIFFORD RUSS FOR THE EMPLOYER.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
R. W. TEAGLE: SEPTEMBER 26, 1967.

1. THE MINISTER OF LABOUR HAS REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD, PURSUANT TO SECTION 79A OF THE ACT, THE QUESTION WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT, OR PURSUANT TO ANY OTHER PROVISIONS OF THE LABOUR RELATIONS ACT.
2. RUSS CONSTRUCTION (LONDON) LIMITED, HEREINAFTER CALLED THE COMPANY, WAS INCORPORATED ON THE 8TH OF SEPTEMBER, 1965. ITS PRESIDENT AND MAJORITY SHAREHOLDER IS CLIFFORD RUSS.
3. PRIOR TO THE DATE OF INCORPORATION OF THE COMPANY CLIFFORD RUSS CARRIED ON THE BUSINESS OF A BUILDING CONTRACTOR UNDER THE REGISTERED NAME OF RUSS CONSTRUCTION COMPANY, OF WHICH HE WAS THE SOLE PROPRIETOR.
4. ON THE 1ST DAY OF JANUARY, 1964, RUSS CONSTRUCTION COMPANY SIGNED A COLLECTIVE AGREEMENT WITH LOCAL #949, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, HEREINAFTER CALLED THE UNION. THIS AGREEMENT CONTINUED IN AFFECT UNTIL THE 31ST DAY OF DECEMBER, 1965, AND YEARLY THEREAFTER SUBJECT TO NOTICE.
5. ON SEPTEMBER 15TH, 1965, NOTICE UNDER SECTION 19 OF THE AGREEMENT AND SECTION 40 OF THE LABOUR RELATIONS ACT WAS GIVEN BY THE UNION TO RUSS CONSTRUCTION COMPANY. BY WAY OF REPLY THERETO RUSS CONSTRUCTION COMPANY, THROUGH CLIFFORD RUSS, SIGNED AND RETURNED TO THE UNION A FORM WHICH WAS TYPED AT THE FOOT OF THE NOTICE INDICATING ITS AGREEMENT TO ABIDE BY THE RESULTS OF NEGOTIATIONS BETWEEN THE UNION AND THE WINDSOR CONSTRUCTION ASSOCIATION AND THE GREATER WINDSOR HOME BUILDERS ASSOCIATION.
6. SUBSEQUENTLY, THREE COPIES OF THE NEW AGREEMENT WERE SENT TO RUSS CONSTRUCTION COMPANY. MR. RUSS RECEIVED THE CONTRACTS, BUT IGNORED THEM BECAUSE BY THE TIME OF THEIR ARRIVAL RUSS CONSTRUCTION COMPANY WAS NOT IN OPERATION AND HE WAS CONCERNED WITH THE AFFAIRS OF RUSS CONSTRUCTION (LONDON) LIMITED, WHICH HAD HAD NO AGREEMENT WITH THE UNION. THE CHANGE OF NAME WAS NOT, HOWEVER, COMMUNICATED TO THE UNION BY THE COMPANY AND THE FORMER ONLY BECAME AWARE OF THE NEW

ENTITY BY REASON OF A REFERENCE TO IT MADE IN A NEWSPAPER IN MAY OF 1967.

7. ON JUNE 2ND, 1967, THE UNION WROTE TO THE COMPANY SIGNIFYING ITS DESIRE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT "AS PROVIDED FOR IN SECTION 47 OF THE ONTARIO LABOUR RELATIONS ACT". TO THIS NOTICE THE COMPANY REPLIED THAT IT HAD NO DESIRE TO NEGOTIATE AN AGREEMENT WITH THE UNION AND THAT IT DID NOT FEEL THAT AN AGREEMENT EXISTED. THE UNION THEN MADE APPLICATION FOR CONCILIATION, WHICH GAVE RISE TO THIS REFERENCE.

8. IT WOULD APPEAR FROM THE EVIDENCE, AND INDEED IT IS CONCEDED BY COUNSEL, THAT NO COLLECTIVE AGREEMENT EXISTED AT ANY TIME BETWEEN THE UNION AND THE COMPANY SO THAT NO QUESTION OF THE RIGHT TO GIVE NOTICE BASED UPON SUCH AN AGREEMENT ARISES IN THESE CONSIDERATIONS.

9. THE EVIDENCE IS THAT IN THE FALL OF 1964 RUSS CONSTRUCTION LIMITED SOLD ITS PHYSICAL ASSETS TO DIFFERENT PERSONS. NONE OF THE ASSETS WERE SOLD OR TRANSFERRED TO OR ACQUIRED BY RUSS CONSTRUCTION (LONDON) LIMITED. NONE OF THE CONTRACTS HELD BY RUSS CONSTRUCTION COMPANY WERE TAKEN OVER BY THE COMPANY BUT WERE ALL COMPLETED BY THE FORMER BEFORE THE COMPANY COMMENCED OPERATIONS. THERE WAS NO AGREEMENT OF PURCHASE AND SALE DRAWN BETWEEN THE TWO CONCERNS, NOR DOES IT APPEAR THAT ANY OF THE CUSTOMERS OF THE EARLIER BUSINESS BECAME CUSTOMERS OF THE LATTER ENTERPRISE. THERE WAS NO CONTINUING PAYROLL.

10. THERE WAS EVIDENCE THAT RUSS CONSTRUCTION COMPANY AND RUSS CONSTRUCTION (LONDON) LIMITED MADE USE OF A TRAILER, WHICH CONTAINED A DESK AND A CHAIR, AS AN OFFICE. IT WAS CONTENDED THAT THIS VEHICLE, WHICH NOW CARRIES THE NAME RUSS CONSTRUCTION (LONDON) LIMITED ON ITS SIDE, CONSTITUTED AN ASSET OF THE EARLIER BUSINESS WHICH HAD BEEN SOLD OR TRANSFERRED TO THE COMPANY. THE ONLY EVIDENCE ON THIS MATTER, HOWEVER, IS QUITE POSITIVE ON THE POINT THAT THE TRAILER HAS BEEN AT ALL MATERIAL TIMES THE PRIVATE PROPERTY OF CLIFFORD RUSS AND HAD BEEN REGISTERED IN HIS NAME THROUGHOUT. THE EVIDENCE FURTHER ESTABLISHED THAT THE TRAILER WAS ALSO USED BY MIDDLESEX PAVING COMPANY IN WHICH RUSS ALSO ENJOYED AN INTEREST AND IS PRESENTLY BEING USED AS AN OFFICE FOR A FURTHER COMPANY WHICH RUSS IS INCORPORATING. IN LIGHT OF THIS TESTIMONY, THE CONTENTION THAT THE TRAILER CONSTITUTES AN ASSET, ACQUIRED, AND THE SOLE ASSET ACQUIRABLE, FROM THE RUSS CONSTRUCTION COMPANY BY THE COMPANY CANNOT BE ACCEPTED.

11. WE ARE COMPELLED TO FIND, THEREFORE, ON ALL THE EVIDENCE, THAT NO SALE HAS TAKEN PLACE BETWEEN RUSS CONSTRUCTION COMPANY AND RUSS CONSTRUCTION (LONDON) LIMITED WITHIN THE MEANING OF SECTION 47(A) OF THE ACT.

12. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER THEREFORE IS "NO".

DECISION OF BOARD MEMBER E. BOYER:      SEPTEMBER 26, 1967.

I DISSENT.

THERE IS NO SERIOUS DISPUTE AS TO THE FACTS OF THIS CASE. PRIOR TO THE FALL OF 1965 THE APPLICANT UNION HELD BARGAINING RIGHTS FOR A GROUP OF EMPLOYEES OF RUSS CONSTRUCTION COMPANY, A SOLE PROPRIETORSHIP, WHOLLY OWNED, CONTROLLED AND OPERATED BY ONE CLIFFORD RUSS. THE EVIDENCE ESTABLISHED THAT ON OR ABOUT SEPTEMBER 8, 1965. LETTERS PATENT OF INCORPORATION WERE ISSUED BY THE PROVINCIAL SECRETARY TO RUSS CONSTRUCTION (LONDON) LIMITED. MR. RUSS CONCEDED THAT HE HAD CAUSED THIS COMPANY TO BE INCORPORATED IN THE FALL OF 1965; THAT IT WAS, IN EFFECT, A ONE-MAN PRIVATE COMPANY CONTROLLED BY HIM; AND THAT SINCE THE SPRING OF 1966 IT HAD BEEN ENGAGED IN THE BUSINESS OF GENERAL CONTRACTING AT VARIOUS PROJECTS IN WESTERN ONTARIO. IT WAS ALSO ADMITTED THAT RUSS CONSTRUCTION COMPANY HAD CEASED TO DO BUSINESS ENTIRELY BY THE END OF 1965, AFTER COMPLETING THE CONTRACTS IN PROGRESS AT THE DATE OF INCORPORATION. THE PROVINCIAL SECRETARY'S INCORPORATION FILE DISCLOSED THAT RUSS CONSTRUCTION COMPANY HAD UNDERTAKEN TO CEASE TO DO BUSINESS WITHIN SIX MONTHS OF THE DATE OF INCORPORATION, AND, IN ADDITION, HAD GIVEN ITS CONSENT TO THE USE OF THE CORPORATE NAME "RUSS CONSTRUCTION (LONDON) LIMITED."

WHEN IT COMMENCED ACTIVE OPERATIONS IN THE SPRING OF 1966, RUSS CONSTRUCTION (LONDON) LIMITED TOOK OVER THE TRAILER PREVIOUSLY USED BY RUSS CONSTRUCTION COMPANY AS ITS HEAD OFFICE, TOGETHER WITH THE OFFICE FURNITURE AND CONTENTS OF THE TRAILER.

ON THESE FACTS, IT IS VERY CLEAR TO ME THAT RUSS CONSTRUCTION (LONDON) LIMITED IS THE SUCCESSOR TO RUSS CONSTRUCTION COMPANY WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. WHAT HAS HAPPENED IS VERY SIMPLE: A SOLE PROPRIETOR HAS INCORPORATED HIS BUSINESS. WHILE IT MAY BE THAT THE EXTENT AND VALUE OF ASSETS TRANSFERRED IS RELATIVELY INSIGNIFICANT, THIS FACT ALONE SURELY CANNOT MAKE THE TRANSACTION ANY LESS A "SALE" WITHIN THE MEANING OF THE APPLICABLE LEGISLATION. THERE IS NO QUESTION IN MY MIND THAT THE TRAILER AND ITS CONTENTS WERE DISPOSED OF BY THE PREDECESSOR FIRM TO THE SUCCESSOR COMPANY. THE MAJORITY NOTES THAT THE TRAILER WAS PREVIOUSLY REGISTERED IN THE NAME OF CLIFFORD RUSS PERSONALLY. WITH RESPECT, IT SEEMS TO ME THAT THE FACT OF REGISTRATION IS IMMATERIAL. THERE WAS NO DOUBT WHATEVER FROM THE EVIDENCE THAT THE TRAILER WAS USED ENTIRELY IN CONNECTION WITH THE PREDECESSOR'S GENERAL CONTRACTING BUSINESS, AND THAT IT WAS IN NO LEGAL OR LOGICAL SENSE AN ASSET OWNED BY MR. RUSS FOR HIS OWN PERSONAL USE. MY UNDERSTANDING OF THE LAW IS THAT IN DETERMINING WHETHER PARTICULAR ASSETS BELONG TO A FIRM, ON THE ONE HAND, OR ITS PARTICIPATING PRINCIPALS ON THE OTHER, IS TO BE DETERMINED BY EXAMINING THE USE TO WHICH THE ASSETS ARE PUT. HERE THE TRAILER, AND ITS CONTENTS, WERE USED EXCLUSIVELY BY THE PREDECESSOR. IT IS THEREFORE WRONG IN LAW, AND WITH RESPECT, NAIVE, TO SAY, AS THE MAJORITY APPEARS TO DO, THAT PRIOR TO INCORPORATION THE TRAILER AND ITS CONTENTS WERE



NOT ASSETS OF THE SOLE PROPRIETORSHIP. THE EVIDENCE IS EQUALLY CLEAR THAT SINCE INCORPORATION THE TRAILER AND CONTENTS HAVE BEEN USED, IF NOT EXCLUSIVELY, AT LEAST FOR THE VAST MAJORITY OF THE TIME, AS THE HEADQUARTERS OF THE NEW CORPORATION. THE NEW LIMITED COMPANY HAS ALSO HAD THE BENEFIT (CONFERRED UPON IT BY THE PREDECESSOR, AS EVIDENCED IN THE CONSENT FILED WITH THE PROVINCIAL SECRETARY) OF THE USE OF THE "RUSS" NAME. THE TRANSFER OF THIS INTANGIBLE, BUT NONETHELESS IMPORTANT, ITEM OF GOODWILL, IS FURTHER EVIDENCE OF A DISPOSITION WITHIN THE MEANING OF SECTION 47A.

IT IS NOT SURPRISING OR SIGNIFICANT THAT THIS IS THE ONLY OBJECTIVE EVIDENCE ESTABLISHING A TRANSFER OF ASSETS. IT WAS EVIDENT THAT RUSS CONSTRUCTION COMPANY WAS A SMALL CONTRACTING FIRM; THAT IT HAD NO CONTINUING PAYROLL, AND THAT BETWEEN JOBS IT WAS APPARENTLY INACTIVE. WITH NO CONTINUING PAYROLL, HOW CAN THE FAILURE TO TAKE OVER EMPLOYEES OF THE PREDECESSOR HAVE ANY SIGNIFICANCE?

IN THIS CASE, THEREFORE, I AM SATISFIED THAT THE LIMITED COMPANY OBTAINED TRANSFERABLE ASSETS (BOTH TANGIBLE AND INTANGIBLE) PREVIOUSLY OWNED AND USED BY THE PREDECESSOR IN AN IDENTICAL UNDERTAKING, AND THAT THIS OBJECTIVE EVIDENCE OF THE TRANSFER OF ASSETS SUPPORTS THE FINDING OF A "SALE" WITHIN SECTION 47A OF THE ACT. THE FACT THAT THERE IS NO EVIDENCE OF CONSIDERATION FLOWING FROM THE SUCCESSOR TO THE PREDECESSOR IS, OF COURSE, IMMATERIAL - A GIFT, IF THE TRANSACTION SHOULD BE SO CHARACTERIZED, FALLS WITHIN THE WORDS "ANY OTHER MANNER OF DISPOSITION" IN SECTION 47A.

HOWEVER, I WISH TO ADD THAT EVEN IF THERE HAD BEEN NO EVIDENCE OF A TRANSFER OF PHYSICAL ASSETS AND THE ASSUMPTION OF GOODWILL, I SHOULD HAVE BEEN PREPARED TO FIND THAT RUSS CONSTRUCTION (LONDON) LIMITED WAS THE BUSINESS SUCCESSOR OF RUSS CONSTRUCTION COMPANY. IT SEEMS TO ME THAT THE INFERENCE OF SUCCESSORSHIP IS UNAVOIDABLE WHEN A SOLE PROPRIETOR INCORPORATES AND CARRIES ON THE IDENTICAL BUSINESS FOLLOWING INCORPORATION. UNLESS THIS INFERENCE CAN BE DRAWN FROM THE VERY NATURE OF THE TRANSACTION, THERE IS NOTHING IN EXISTING LEGISLATION TO PREVENT AN UNSCRUPULOUS EMPLOYER IN THE CONSTRUCTION INDUSTRY FROM SO ARRANGING HIS BUSINESS TO PROVIDE A SEPARATE CORPORATE RECEPTACLE FOR EACH PROJECT UNDERTAKEN. IT WAS THIS VERY DANGER WHICH, IN MY VIEW, THE LEGISLATURE HAD IN MIND WHEN SECTION 47A WAS ENACTED - AND THE MAJORITY'S UNREALISTICALLY RESTRICTIVE INTERPRETATION OF THE SECTION INVITES THE VERY TYPE OF ABUSE WHICH THE LEGISLATURE HAS ATTEMPTED TO REMEDY. MY DECISION IS ENFORCED BY THE FACT THAT THE PREDECESSOR COMPANY IS NO LONGER IN OPERATION AND, IN FACT, CEASED TO EXIST BEFORE THE NEW CORPORATION COMMENCED TO DO BUSINESS. I WOULD SIMPLY ADD THAT IF THE MAJORITY DECISION PREVAILS, SECTION 47A IS ENTIRELY ILLUSORY AS A MEANINGFUL REMEDY TO PREVENT ARTIFICIAL CHANGES IN THE LEGAL IDENTITY OF AN EMPLOYER.

IN THE RESULT I WOULD HAVE HELD THAT THE UNION IS ENTITLED TO GIVE NOTICE TO RUSS CONSTRUCTION (LONDON) LIMITED OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT PURSUANT TO SECTION 47A (2) OF THE LABOUR RELATIONS ACT.



INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

13484(A)-67-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED  
(COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF  
AMERICA, LOCAL 2486, AND LABOURERS INTERNATIONAL UNION OF NORTH  
AMERICA, LOCAL UNION 493 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND  
BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF THE BOARD: SEPTEMBER 14, 1967.

1. BY A DECISION OF THE BOARD DATED AUGUST 11TH, 1967 THE BOARD  
MADE THE FOLLOWING INTERIM ORDER WITH REGARD TO THE COMPLAINT MADE  
BY THE COMPLAINANT IN THIS MATTER:

THE COMPLAINANT SHALL ASSIGN THE WORK OF  
STRIPPING AND RELEASING WALL FORMS, TO BE  
USED AGAIN, WHICH ARE BEING USED BY THE  
COMPLAINANT ON THE FRASER-BRACE ENGINEERING  
COMPANY, LIMITED CONSTRUCTION PROJECT FOR  
INTERNATIONAL NICKEL COMPANY OF CANADA,  
LIMITED, AT SUDBURY, TO MEMBERS OF THE  
RESPONDENT UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA, LOCAL 2486.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH  
AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME  
AS THE BOARD ISSUES A FURTHER DIRECTION.

2. PURSUANT TO SECTION 66(4) OF THE LABOUR RELATIONS ACT, THE  
BOARD ON AUGUST 11, 1967 FILED IN THE OFFICE OF THE REGISTRAR OF THE  
SUPREME COURT A COPY OF THE ABOVE INTERIM ORDER.

3. BY LETTER DATED SEPTEMBER 12TH, 1967, THE COMPLAINANT REQUESTED  
LEAVE OF THE BOARD TO WITHDRAW ITS COMPLAINT. BY LETTERS DATED SEPTEMBER  
12TH AND 13TH, 1967, THE RESPONDENTS CONSENTED TO THE WITHDRAWAL OF  
THE COMPLAINT. FOR THE BOARD TO GRANT THE COMPLAINANT'S REQUEST AT  
THIS STAGE IN THE PROCEEDINGS OBVIOUSLY WOULD PRECLUDE ANY DETERMINATION  
BY THE BOARD ON THE MERITS OF THE COMPLAINT. IN THESE CIRCUMSTANCES, THE  
BOARD IS OF THE OPINION THAT ITS CONSENT TO THE COMPLAINANT'S REQUEST  
NECESSARILY MUST BE CONDITIONAL UPON A REVOCATION BY THE BOARD OF ITS  
INTERIM ORDER IN THIS MATTER.

4. THE BOARD HEREBY REVOKES ITS INTERIM ORDER DATED AUGUST 11TH,  
1967.

5. THE COMPLAINT IS WITHDRAWN BY LEAVE OF THE BOARD.

13599(A)-67-JD: REDFERN CONSTRUCTION COMPANY LIMITED (COMPLAINANT)  
THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 793  
AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183  
(RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: W. S. COOK AND K. MOHUN FOR THE COMPLAINANT,  
H. A. HERRON AND W. W. LIPPETT FOR THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL UNION 793, M. J. REILLY FOR LABOURERS  
INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183.

DECISION OF THE BOARD: SEPTEMBER 7, 1967.

1. THE COMPLAINANT IN ITS COMPLAINT HAS REQUESTED THAT THE BOARD  
MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS  
IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

2. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE  
BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE  
FOLLOWING INTERIM ORDER:

THE COMPLAINANT COMPANY SHALL CONTINUE TO  
ASSIGN TO A MEMBER OF THE RESPONDENT  
LABOURERS INTERNATIONAL UNION OF NORTH AMERICA,  
LOCAL 183, THE WORK OF OPERATING AN ELECTRICALLY  
POWERED HYDRAULICALLY RUN EXCAVATING BOOM MOUNTED  
ON A FLAT CAR BEING USED IN THE EXCAVATION OF  
AN UNDERGROUND TUNNEL FOR THE GARRISON CREEK  
STORM SEWER UNDER CONSTRUCTION BY THE COMPLAINANT  
PURSUANT TO A CONTRACT WITH THE PUBLIC WORKS  
DEPARTMENT OF METROPOLITAN TORONTO AT A LOCATION  
EXTENDING NORTH AND SOUTH FROM THE INTERSECTION  
OF PORTLAND AND ADELAIDE STREETS IN THE CITY OF  
TORONTO.

THIS ORDER SHALL REMAIN IN EFFECT UNTIL SUCH TIME  
AS THE BOARD ISSUES A FURTHER DIRECTION.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

12748-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) v. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) v.  
CLAIRSON EMPLOYEES' ASSOCIATION (INTERVENER).

BEFORE: G. W. REED Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE  
AND E. BOYER:

DECISION OF THE BOARD: SEPTEMBER 21, 1967.

1. ON SEPTEMBER 6, 1967, THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE HELD IN THIS MATTER WITH THE VOTERS BEING OFFERED A CHOICE BETWEEN THE APPLICANT AND THE INTERVENING TRADE UNION. ALL EMPLOYEES IN THE BARGAINING UNIT ON SEPTEMBER 6, 1967 WERE DECLARED TO BE ELIGIBLE VOTERS.

2. IN A LETTER RECEIVED FROM THE RESPONDENT ON SEPTEMBER 11, 1967, THE BOARD WAS INFORMED THAT ON SEPTEMBER 6, 1967 THERE WAS ONLY ONE EMPLOYEE ELIGIBLE TO VOTE AND THE RESPONDENT SUBMITTED THAT THE APPLICATION OUGHT TO BE DISMISSED. COPIES OF THIS LETTER WERE SENT OUT TO THE OTHER PARTIES FOR THEIR COMMENTS AND THEIR REPLIES HAVE NOW BEEN RECEIVED BY THE BOARD. THE INTERVENER AGREES WITH THE RESPONDENT. THE APPLICANT SUBMITS THAT TO APPLY THE BOARD'S USUAL POLICY IN SUCH CASES, THAT IS, TO POSTPONE THE VOTE TO A FUTURE DATE, WOULD ONLY RESULT IN DELAY WHICH IS CONTRARY TO THE SPIRIT OF THE SECTIONS OF THE ACT DEALING WITH CERTIFICATION IN THE CONSTRUCTION INDUSTRY. THE APPLICANT THEREFORE REQUESTS THE BOARD TO CERTIFY THE APPLICANT OUT-RIGHT IF THE BOARD FINDS THAT THE APPLICANT HAS THE NECESSARY PERCENTAGE OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS, NOTWITHSTANDING THE FACT THAT THERE IS AN INCUMBENT TRADE UNION.

3. SO FAR AS THIS DIVISION OF THE BOARD IS AWARE, THERE HAS BEEN NO CASE, WHETHER FALLING WITHIN OR WITHOUT THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, IN WHICH THE BOARD HAS CERTIFIED AN APPLICANT WITHOUT A REPRESENTATION VOTE HAVING BEEN TAKEN, WHERE AN INCUMBENT TRADE UNION HAS NOT ABANDONED ITS BARGAINING RIGHTS. THE IMPORTANCE OF A REPRESENTATION VOTE WHERE THERE IS AN INCUMBENT TRADE UNION IS STRESSED IN THE THOMAS FULLER CONSTRUCTION COMPANY (1958) LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY, 1963, P. 108.

4. WHERE IT BECOMES IMPOSSIBLE TO HOLD A REPRESENTATION VOTE BECAUSE THERE ARE NO EMPLOYEES IN THE BARGAINING UNIT, IT HAS BEEN THE INVARIABLE PRACTICE OF THE BOARD TO POSTPONE THE TAKING OF THE VOTE UNTIL SUCH TIME AS THERE APPEARS TO THE BOARD TO BE A REPRESENTATIVE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT. SEE, FOR EXAMPLE, N. DI LORENZO CONSTRUCTION COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, APRIL 1965, P. 33, BIRD CONSTRUCTION CO. LTD., BOARD FILE 11170-65-R (MAY, 1966), DECOR DRY WALL OF ONTARIO LIMITED, BOARD FILES 10605-65-R AND 10606-65-R (MARCH, 1966), THUNDER BAY HARBOUR IMPROVEMENTS, BOARD FILE 11579-65-R (MAY, 1966), AND PRE-CON MURRAY LIMITED, BOARD FILE 10452-65-R (JUNE, 1965). IN THE LAST TWO CASES CITED THERE WAS AN INCUMBENT TRADE UNION. ALTHOUGH THE APPLICANT IN EACH CASE HAD MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS, NEVERTHELESS THE BOARD IN EACH CASE POSTPONED THE TAKING OF THE REPRESENTATION VOTE TO A FUTURE DATE.

5. WE ARE SATISFIED THAT IF WE WERE TO ADOPT THE SUBMISSIONS OF THE APPLICANT IT WOULD CONSTITUTE A COMPLETE DEPARTURE FROM LONG-STANDING BOARD POLICIES IN MATTERS OF THIS KIND AND WE ARE NOT PREPARED TO DO SO IN THIS CASE. NOR DO WE DEEM IT NECESSARY TO HOLD A HEARING, AS REQUESTED BY THE APPLICANT, BECAUSE ITS SUBMISSIONS ARE CLEARLY SET OUT IN ITS

LETTER TO THE BOARD DATED SEPTEMBER 18, 1967 AND NOTHING USEFUL WOULD BE GAINED FROM A FURTHER ELABORATION THEREON. REFERENCE IS MADE TO SECTION 75(9A) OF THE LABOUR RELATIONS ACT.

6. IN THE RESULT, THEREFORE, THE BOARD'S DECISION DATED SEPTEMBER 6, 1967, IS HEREBY CONFIRMED. IN ACCORDANCE WITH OUR USUAL PRACTICE, THE RESPONDENT IS DIRECTED TO REPORT TO THE REGISTRAR FORTHWITH AND THEREAFTER ON A MONTHLY BASIS THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT. IF ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT COMES TO THE ATTENTION OF THE OTHER PARTIES THEY ARE DIRECTED TO NOTIFY THE REGISTRAR WITH THE LEAST POSSIBLE DELAY.

13190-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE GENERAL FIREPROOFING COMPANY (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: SEPTEMBER 5, 1967.

1. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. APPLIED ON AUGUST 8TH, 1967 TO BE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED. SINCE THE APPLICATION OF DISTRICT 50 WAS MADE AFTER THE TERMINAL DATE OF THE INSTANT APPLICATION THE BOARD TREATED THE SUBSEQUENT APPLICATION AS A SEPARATE APPLICATION AND IN BOARD FILE NO. 13487-67-R BY ITS DECISION DATED AUGUST 9TH, 1967 STATED AS FOLLOWS:

1. ON AUGUST 8TH, 1967, THE APPLICANT APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT AT GEORGE TOWN WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

2. IN ANOTHER APPLICATION, BOARD FILE 13190-67-R, THE UNITED STEELWORKERS OF AMERICA APPLIED ON MAY 30TH, 1967 TO BE CERTIFIED FOR THE SAME UNIT OF EMPLOYEES. THE TERMINAL DATE FIXED FOR THE APPLICATION BY THE UNITED STEELWORKERS OF AMERICA WAS JUNE 7TH, 1967.

3. SINCE THE INSTANT APPLICATION WAS MADE SUBSEQUENT TO THE TERMINAL DATE OF THE APPLICATION BY THE UNITED STEELWORKERS OF AMERICA, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 77(3)(B) OF THE LABOUR RELATIONS ACT, POSTPONES CONSIDERATION OF THE SUBSEQUENT APPLICATION BY THE INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A., UNTIL A FINAL DECISION HAS BEEN ISSUED ON THE ORIGINAL APPLICATION MADE BY THE UNITED STEELWORKERS OF AMERICA.



2. ON AUGUST 25TH, 1967, DISTRICT 50 WROTE TO THE BOARD AND REQUESTED THE BOARD TO REVIEW ITS DECISION OF AUGUST 9TH, 1967 AND TREAT THE SUBSEQUENT APPLICATION AS HAVING BEEN MADE ON THE DATE OF THE MAKING OF THE INSTANT APPLICATION. IF THE BOARD WERE TO ACCEDE TO THE REQUEST OF DISTRICT 50 THE PROVISIONS OF SECTION 48(1) OF THE BOARD'S RULES OF PROCEDURE WOULD PRECLUDE THE BOARD FROM ACCEPTING ANY EVIDENCE OF MEMBERSHIP FILED SUBSEQUENT TO THE TERMINAL DATE OF THE FIRST APPLICATION. SINCE THE GREATER PART OF THE EVIDENCE OF MEMBERSHIP ON WHICH DISTRICT 50 RELIED WAS NOT FILED UNTIL AUGUST 8TH, 1967, DISTRICT 50 WOULD HAVE LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AS MEMBERS AND ITS APPLICATION WOULD NECESSARILY BE DISMISSED. IF, HOWEVER, DISTRICT 50 HAD REQUESTED THE BOARD TO EXTEND THE TERMINAL DATE OF THE FIRST APPLICATION (WHICH IT HAS NOT REQUESTED) SUCH REQUEST WOULD BE DENIED BECAUSE THERE IS NO REASON WHY SUCH A REQUEST WOULD BE JUSTIFIED IN ALL THE CIRCUMSTANCES, ESPECIALLY WHERE THE SUBSEQUENT APPLICATION FOR CERTIFICATION WAS MADE MORE THAN TWO MONTHS AFTER THE TERMINAL DATE IN THIS MATTER.

3. SINCE THE BOARD CONSIDERED ALL THE ISSUES RAISED BY DISTRICT 50 IN ITS LETTER DATED AUGUST 25TH, 1967 PRIOR TO ARRIVING AT ITS DECISION OF AUGUST 9TH, 1967 IN BOARD FILE 13487-67-R AND SINCE THE GRANTING OF THE REQUEST WOULD NOT BE OF ADVANTAGE TO DISTRICT 50 BUT WOULD NECESSARILY ENTAIL THE DISMISSAL OF ITS APPLICATION, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, VARY OR REVOKE THAT DECISION OR ANY OF ITS DECISIONS IN THE INSTANT CASE.

4. THE REQUEST OF INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. IS ACCORDINGLY DENIED.

13487-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)  
V. GENERAL FIREPROOFING COMPANY (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: SEPTEMBER 5, 1967.

1. THE APPLICANT IN THIS MATTER MADE A REQUEST TO THE BOARD IN FILE NO. 13190-67-R WHICH WAS DEALT WITH BY THE BOARD IN THAT CASE AS FOLLOWS:

"FILE NO. 13190-67-R

ONTARIO LABOUR RELATIONS BOARD

BETWEEN:

UNITED STEELWORKERS OF AMERICA,

APPLICANT,

- AND -

THE GENERAL FIREPROOFING COMPANY,

RESPONDENT,

- AND -

INTERNATIONAL UNION OF DISTRICT 50,  
U.M.W.A.,

INTERVENER,

- AND -

GROUP OF EMPLOYEES,

OBJECTORS.

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD  
MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD:

1. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. APPLIED ON AUGUST 8TH, 1967 TO BE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED. SINCE THE APPLICATION OF DISTRICT 50 WAS MADE AFTER THE TERMINAL DATE OF THE INSTANT APPLICATION THE BOARD TREATED THE SUBSEQUENT APPLICATION AS A SEPARATE APPLICATION AND IN BOARD FILE NO. 13487-67-R BY ITS DECISION DATED AUGUST 9TH, 1967 STATED AS FOLLOWS:

1. ON AUGUST 8TH, 1967, THE APPLICANT APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

2. IN ANOTHER APPLICATION, BOARD FILE 13190-67-R, THE UNITED STEELWORKERS OF AMERICA APPLIED ON MAY 30TH, 1967 TO BE CERTIFIED FOR THE SAME UNIT OF EMPLOYEES. THE TERMINAL DATE FIXED FOR THE APPLICATION BY THE UNITED STEELWORKERS OF AMERICA WAS JUNE 7TH, 1967.

3. SINCE THE INSTANT APPLICATION WAS MADE SUBSEQUENT TO THE TERMINAL DATE OF THE APPLICATION BY THE UNITED STEELWORKERS OF AMERICA, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 77(3)(B) OF THE LABOUR RELATIONS ACT, POSTPONES CONSIDERATION OF THE SUBSEQUENT APPLICATION BY THE INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A., UNTIL A FINAL DECISION HAS BEEN ISSUED ON THE ORIGINAL APPLICATION MADE BY THE UNITED STEELWORKERS OF AMERICA.

2. ON AUGUST 25TH, 1967, DISTRICT 50 WROTE TO THE BOARD AND REQUESTED THE BOARD TO REVIEW ITS DECISION OF AUGUST 9TH, 1967 AND TREAT THE SUBSEQUENT APPLICATION AS HAVING BEEN MADE ON THE DATE OF THE MAKING OF THE INSTANT APPLICATION. IF THE BOARD WERE TO ACCEDE TO THE REQUEST OF DISTRICT 50 THE PROVISIONS OF SECTION 48(1) OF THE BOARD'S RULES OF PROCEDURE WOULD PRECLUDE THE BOARD FROM ACCEPTING ANY EVIDENCE OF MEMBERSHIP FILED SUBSEQUENT TO THE TERMINAL DATE OF THE FIRST APPLICATION. SINCE THE GREATER PART OF THE EVIDENCE OF MEMBERSHIP ON WHICH DISTRICT 50 RELIED WAS NOT FILED UNTIL AUGUST 8TH, 1967, DISTRICT 50 WOULD HAVE LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AS MEMBERS AND ITS APPLICATION WOULD NECESSARILY BE DISMISSED. IF, HOWEVER, DISTRICT 50 HAD REQUESTED THE BOARD TO EXTEND THE TERMINAL DATE OF THE FIRST APPLICATION (WHICH IT HAS NOT REQUESTED) SUCH REQUEST WOULD BE DENIED BECAUSE THERE IS NO REASON WHY SUCH A REQUEST WOULD BE JUSTIFIED IN ALL THE CIRCUMSTANCES, ESPECIALLY WHERE THE SUBSEQUENT APPLICATION FOR CERTIFICATION WAS MADE MORE THAN TWO MONTHS AFTER THE TERMINAL DATE IN THIS MATTER.

3. SINCE THE BOARD CONSIDERED ALL THE ISSUES RAISED BY DISTRICT 50 IN ITS LETTER DATED AUGUST 25TH, 1967 PRIOR TO ARRIVING AT ITS DECISION OF AUGUST 9TH, 1967 IN BOARD FILE 13487-67-R AND SINCE THE GRANTING OF THE REQUEST WOULD NOT BE OF ADVANTAGE TO DISTRICT 50 BUT WOULD NECESSARILY ENTAIL THE DISMISSAL OF ITS APPLICATION, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, VARY OR REVOKE THAT DECISION OR ANY OF ITS DECISIONS IN THE INSTANT CASE.

4. THE REQUEST OF INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. IS ACCORDINGLY DENIED."

13519-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) v. RIO LUMBER CO. LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: SEPTEMBER 20, 1967.

1. THE APPLICANT HAS REQUESTED RECONSIDERATION OF THE BOARD'S DECISION IN THIS MATTER, DATED AUGUST 30TH, 1967, IN WHICH A REPRESENTATION VOTE WAS DIRECTED. THE APPLICANT STATES THAT A. KNOWLES AND V. AMELLIO SHOULD NOT BE INCLUDED ON THE LIST OF EMPLOYEES, AND THAT D. GOUGH WAS "DELETED" FROM THE LIST OF EMPLOYEES CONSIDERED BY THE BOARD IN MAKING ITS DETERMINATION WITH RESPECT TO THE MEMBERSHIP IN THE APPLICANT AMONG EMPLOYEES WITHIN THE BARGAINING UNIT. THE BOARD MADE NO RULING WITH RESPECT TO D. GOUGH, WHOSE NAME DOES NOT APPEAR AND DID NOT APPEAR UPON THE LIST OF EMPLOYEES WITHIN THE BARGAINING UNIT. THE NAMES OF KNOWLES AND AMELLIO WERE ADDED TO THE LIST AT THE DATE OF THE HEARING, UPON THE REQUEST OF THE RESPONDENT, AND WITHOUT OBJECTION TAKEN BY THE APPLICANT.

2. IN ITS REQUEST, THE APPLICANT DOES NOT REFER TO ANY EVIDENCE OR ARGUMENT WHICH WAS NOT AVAILABLE OR OPEN TO IT AT THE HEARING. THE REQUEST FOR RECONSIDERATION IS THEREFORE DENIED.

13597-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) v. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT) CANADIAN UNION OF PUBLIC EMPLOYEES - LOCAL 79 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 26, 1967.

1. THE APPLICANT BY ITS LETTER OF SEPTEMBER 22ND, 1967 HAS REQUESTED THE BOARD TO REVIEW ITS DECISION OF SEPTEMBER 20TH, 1967 IN THIS MATTER WHEREIN THE BOARD DISMISSED THIS APPLICATION.

2. THE BOARD IN ITS DECISION OF SEPTEMBER 20TH FOUND THAT ALTHOUGH THIS APPLICATION WAS MADE BY CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 ALL THE MEMBERSHIP EVIDENCE WAS IN THE FORM OF COMBINATION APPLICATION AND RECEIPT CARDS IN THE NAME OF THE PARENT ORGANIZATION OF THE APPLICANT, NAMELY, THE CANADIAN UNION OF OPERATING ENGINEERS. SINCE THE APPLICANT FILED NO EVIDENCE WHICH INDICATED THAT THE EMPLOYEES WISHED TO BECOME MEMBERS OF THE APPLICANT RATHER THAN MEMBERS OF THE PARENT ORGANIZATION, THE BOARD WAS OF OPINION THAT THE APPLICANT HAD FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE DISMISSED THE APPLICATION WITHOUT A HEARING.



3. SINCE ALL THE ISSUES RAISED BY THE APPLICANT IN ITS LETTER OF SEPTEMBER 22ND, 1967 WERE CONSIDERED BY THE BOARD PRIOR TO REACHING ITS DECISION OF SEPTEMBER 20TH, 1967 AND SINCE ALL OF THE APPLICANT'S EVIDENCE OF MEMBERSHIP IN THIS MATTER WAS BEFORE THE BOARD PRIOR TO SEPTEMBER 20TH, 1967, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF SEPTEMBER 20TH, 1967, IN THIS MATTER.

4. THE APPLICANT'S REQUEST IS ACCORDINGLY DENIED.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

12697-66-U: GEORGE THOMAS (COMPLAINANT) V. COLLINGWOOD SHIPYARDS  
(RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

DECISION OF THE BOARD: SEPTEMBER 6, 1967.

1. THE RESPONDENT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER.

2. THE FIRST GROUND UPON WHICH RECONSIDERATION IS SOUGHT IS WITH RESPECT TO A CONCLUSION OF THE BOARD FOUND IN PARAGRAPH 19 OF ITS DECISION. IT READS IN PART, "THE CONDUCT OF THE RESPONDENT - - AMOUNTS TO A CONTRAVENTION - - IN THAT IT CONSTITUTES A PENALTY IMPOSED UPON THE COMPLAINANT BECAUSE HE FILED A COMPLAINT UNDER THIS ACT". THE RESPONDENT STATES THAT THE ABOVE IS NOT THE OFFENCE ALLEGED BY THE COMPLAINANT AND THAT IT, THEREFORE, HAD NO OPPORTUNITY TO ADDUCE EVIDENCE OR PRESENT ARGUMENT AGAINST SUCH A FINDING. THE COMPLAINANT HAD REQUESTED THAT "THE INTIMIDATION AND COERCION CEASE" AND HAD NOT REFERRED TO THE IMPOSITION OF "A PECUNIARY OR OTHER PENALTY".

3. THE RESPONDENT AT NO TIME PRIOR TO OR DURING THE HEARING CHALLENGED THE GENERALITY OF THE CHARGE THAT THE CONDUCT VIOLATED SECTION 59A (1) (D) OF THE ACT. THE BOARD FOUND THE CONDUCT COMPLAINED OF CONSTITUTED AN ACT OF INTIMIDATION AND COERCION BY WAY OF THE IMPOSITION OF A PENALTY. THE COMPLAINANT'S PRAYER THAT THE INTIMIDATION AND COERCION CEASE IS, BY DIRECT REFERENCE, INCORPORATED INTO THE BOARD'S FINAL DETERMINATION SET OUT IN PARAGRAPH 19 OF THE DECISION. SEE ALSO PARAGRAPH 5 HEREOF.

4. THE SECOND GROUND FOR RECONSIDERATION REFERS TO THE WORDS USED BY THE BOARD IN PARAGRAPH 17 OF THE DECISION, WHICH STATES, "HE WAS UNNECESSARILY SINGLED OUT, WHETHER DELIBERATELY OR INADVERTENTLY". THE RESPONDENT SUBMITS THAT IT IS DIFFICULT TO SEE HOW INADVERTENT CONDUCT COULD AMOUNT TO INTIMIDATION OR COERCION. THE BOARD HERE HAS SIMPLY DESCRIBED THE EFFECT OF THE NOTICE WITHOUT DETERMINING ITS INTENT. REFERENCE SHOULD BE HAD TO PARAGRAPH 18 LINE 6 AS TO INTENT.

5. UNDER THE SAME ENUMERATION OF GROUNDS FOR RECONSIDERATION THE RESPONDENT ARGUES THAT INTIMIDATION AND COERCION BOTH IMPLY A THREAT OR ACT DESIGNED TO PREVENT A COURSE BEING PURSUED AND NOT AS A PUNISHMENT FOR HAVING PURSUED A COURSE. SECTION 59A (1) (A) APPEARS TO DEAL WITH INTIMIDATION, COERCION AND THE IMPOSITION OF PENALTIES FOR PAST, PRESENT AND FUTURE ACTS WITHOUT LIMITATION OR DISTINCTION. IN ANY EVENT, WHERE THE CONDUCT COMPLAINED OF AMOUNTS TO THE IMPOSITION OF A PENALTY IT IS INHERENTLY INTIMIDATORY AND COERCIVE AS WELL AS PUNITIVE. IT HAS A FUTURE AS WELL AS PRESENT EFFECT. IN THE PRESENT CONTEXT ITS EFFECT IS TO PUNISH THE COMPLAINANT FOR AND PREVENT OR INHIBIT HIM FROM THE EXERCISE OF HIS RIGHTS UNDER THE ACT FOR FEAR OF ADDITIONAL PUNISHMENT.

6. THE THIRD GROUND SUBMITS THAT A FINDING WAS NOT MADE UNDER SECTION 65 (4) (A) OF THE ACT. WITH RESPECT TO THIS SUBMISSION, REFERENCE SHOULD BE HAD TO LINES 5 AND 6 OF PARAGRAPH 19 OF THE DECISION. THE ARGUMENT, AGAIN, WAS OPEN TO THE RESPONDENT AT THE HEARING, BUT WAS NOT MADE AT THAT TIME. IN ANY EVENT, FREEDOM FROM INTERFERENCE WITH OR THE THREAT OF INTERFERENCE WITH THE EXERCISE OF RIGHTS UNDER THE LABOUR RELATIONS ACT IS A FUNDAMENTAL, ELEMENTARY AND UNIVERSAL CONDITION OF EMPLOYMENT.

7. THE FOURTH SUBMISSION HAS TO DO WITH A FINDING OF FACT WHICH THE RESPONDENT ALLEGES IS UNSUPPORTED BY ANY TESTIMONY AT THE HEARING. IT IS ALLEGED THAT NO ONE TESTIFIED THAT THE EFFIGY REMAINED STANDING FOR THREE DAYS. THE NOTES OF ALL THREE MEMBERS OF THE BOARD CLEARLY INDICATE THAT THE COMPLAINANT'S UNCONTRADICTED EVIDENCE WAS THAT THE EFFIGY WAS LEFT HANGING FOR THREE DAYS.

8. THE FIFTH SUBMISSION PROTESTS WHAT IS REFERRED TO AS THE BOARD'S RELUCTANCE TO ACCEPT THE RESPONDENT'S STATEMENT OF THE ADVICE IT RECEIVED FROM THE BOARD'S OFFICER WHO INVESTIGATED AN EARLIER COMPLAINT OF THE COMPLAINANT. THE RESPONDENT SUBMITS THAT WHAT IT "THOUGHT" WAS THE COMPLAINANT'S COMPLAINT IS THE POINT TO BE CONSIDERED. THIS IS DEALT WITH IN PARAGRAPH 12 OF THE BOARD'S DECISION. REFERENCE SHOULD ALSO BE HAD TO PARAGRAPH 10 AND 11. THE MATTER IS GOVERNED BY THE PROVISIONS OF SECTION 83 (3) OF THE ACT. REFERENCE SHOULD ALSO BE HAD TO PRACTICE NOTE #1, DATED JULY 18TH, 1961, AS AMENDED OCTOBER 12TH, 1966.

9. THE REQUEST FOR REVIEW IS DENIED.

12810-66-U: INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION, LOCAL #8 (COMPLAINANT) v. DOMINION LUGGAGE CO. LIMITED (RESPONDENT)

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND O. HODGES.

DECISION OF THE BOARD: SEPTEMBER 20, 1967.

1. THE COMPLAINANT IN THIS MATTER HAS REQUESTED AMPLIFICATION OF THE BOARD'S DECISION DATED AUGUST 30TH, 1967, BY WHICH THE COMPLAINANT WAS DISMISSED. IN PARAGRAPH 2 OF THE BOARD'S ENDORSEMENT, THE CIRCUMSTANCES RELATING TO THE LAY-OFF OF THE AGGRIEVED PERSONS ARE DESCRIBED, AND IT IS NOT SUGGESTED THAT THIS DESCRIPTION IS INADEQUATE. IN PARAGRAPH 3 OF THE BOARD'S ENDORSEMENT, THERE IS SET OUT THE CONCLUSION REACHED IN THIS MATTER BY THE BOARD UPON A SURVEY OF ALL OF THE EVIDENCE. IN PARAGRAPH 4 OF ITS ENDORSEMENT, THE BOARD DEALS WITH AN IMPORTANT CONFLICT IN THE TESTIMONY OF THE WITNESSES. IT IS TRUE, AS COUNSEL FOR THE COMPLAINANT POINTS OUT, THAT THE HEARING OF THIS MATTER CONSUMED A TOTAL OF FIVE DAYS. NO DOUBT, AS COUNSEL STATES, A GREAT DEAL OF TIME AND EFFORT WAS SPENT ON THE PREPARATION OF THE CASE. IT IS ALSO TRUE THAT THE PANEL OF THE BOARD ASSIGNED TO THE HEARING AND DISPOSITION OF THIS MATTER DEVOTED A VERY SUBSTANTIAL PERIOD OF TIME TO THE ANALYSIS AND CONSIDERATION OF THE EVIDENCE WHICH WAS HEARD. NONE OF THESE FACTS, IN OUR VIEW, SUPPORT THE CONCLUSION THAT THE BOARD SHOULD NOW DEVOTE ITSELF TO THE AMPLIFICATION OF THE MATTERS SET OUT IN ITS DECISION.

2. HAVING REGARD TO THE NATURE OF THE EVIDENCE AND DETERMINATIONS WHICH THE BOARD WAS CALLED UPON TO MAKE, IT IS OUR OPINION THAT THE ENDORSEMENT OF THE RECORD DATED AUGUST 30TH, 1967, DEALS IN A PROPER FASHION WITH THE ISSUES BEFORE THE BOARD. THE COMPLAINANT'S REQUEST IS ACCORDINGLY DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

13341-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) v. CARL J. LEHMAN & SONS LIMITED (RESPONDENT).

6. AS WAS NOTED ABOVE, THE ORIGINAL LIST FILED BY THE RESPONDENT CONTAINED NINE NAMES. ONE OF THESE EMPLOYEES, WILLIAM KRUGER, DID NOT WORK ON THE DATE OF THE MAKING OF THE APPLICATION, JULY 6, 1967, AND, INDEED, HAD NOT WORKED SINCE JUNE 16, 1967. IN CONSTRUCTION INDUSTRY CASES THE BOARD HAS ADOPTED THE RULE THAT IF A PERSON IS NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION, SUCH PERSON IS NOT INCLUDED IN THE UNIT FOR PURPOSES OF THE COUNT. (SEE LAKEVIEW SALVAGE & WRECKING COMPANY CASE, O.L.R.B. MONTHLY REPORT, JULY 1967, P. 342.) ACCORDINGLY, WILLIAM KRUGER WOULD NOT BE INCLUDED IN THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT IN THIS CASE.



7. THE NAME DELBERT BYERS ALSO APPEARS ON THE LIST FILED BY THE RESPONDENT, IT IS CLEAR FROM THE EVIDENCE THAT BYERS DOES NOT WORK AT CONSTRUCTION SITES BUT IS ENGAGED ALMOST ENTIRELY IN THE SHOP. HAVING REGARD TO THE DEFINITION OF "CONSTRUCTION INDUSTRY" AS SET OUT IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT, THE BOARD HAS HELD THAT SUCH PERSONS CANNOT BE INCLUDED IN A BARGAINING UNIT ON AN APPLICATION FOR CERTIFICATION WHERE SUCH APPLICATION IS MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. (SEE LAKEVIEW SALVAGE & WRECKING COMPANY CASE, SUPRA; BERGMAN & NELSON LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1966, P. 594.) IN THESE CIRCUMSTANCES, THE NAME OF DELBERT BYERS SHOULD BE STRUCK OFF THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

(SEPTEMBER 29, 1967).

13562-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADECO LTD. (RESPONDENT).

7. THE APPLICANT IS PROPOSING A BARGAINING UNIT CONSISTING OF PORTIONS OF TWO ESTABLISHED BOARD AREAS. IT IS NOT THE POLICY OF THE BOARD TO JOIN ESTABLISHED BOARD AREAS TOGETHER AND IN THE CIRCUMSTANCES OF THIS CASE WE SEE NO JUSTIFICATION FOR DEPARTING FROM THIS GENERAL POLICY.

THERE ARE TWO JOB SITES AFFECTED BY THIS APPLICATION, ONE IN BOARD AREA #3 (LONDON) AND THE OTHER IN THE ESTABLISHED BOARD HAMILTON AREA. ON THE DATE OF THE MAKING OF THIS APPLICATION THERE WAS A CARPENTERS' APPRENTICE AND A LABOURER AT THE JOB SITE IN THE LONDON AREA AND THREE LABOURERS AT THE JOB SITE IN THE HAMILTON AREA. ALTHOUGH THE APPLICANT IS PROPOSING AN ALL EMPLOYEE UNIT, THIS IS CONTRARY TO A RECENTLY ESTABLISHED BOARD POLICY. SEE THE WINTER & SON CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1967, P. 889. IT IS THE BOARD'S OPINION THAT THERE WAS NO APPROPRIATE BARGAINING UNIT IN THE LONDON AREA AT THE DATE OF THE MAKING OF THE APPLICATION. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD FINDS FURTHER THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(SEPTEMBER 5, 1967).



STATISTICAL TABLES FOR SEPTEMBER 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	SEPTEMBER 1967	1ST 6 MONTHS OF FISCAL YEAR 1967-68	1966-67
I. CERTIFICATION	84	512	511
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	44	17
III. DECLARATION OF SUCCESSOR STATUS	1	6	4
IV. DECLARATION THAT STRIKE UNLAWFUL	1	27	12
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	12	-
VI. CONSENT TO PROSECUTE	3	66	50
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	79	60
VIII. MISCELLANEOUS	4	26	33
TOTAL	<u>111</u>	<u>772</u>	<u>687</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	SEPTEMBER 1967	1ST 6 MONTHS OF FISCAL YEAR 1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	65	483	450

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	SEPTEMBER 1967	1ST 6 MONTHS 1967-68	FISCAL YR. 1966-67
I. CERTIFICATION	93	510	506
II. DECLARATION TERMINATING BARGAINING RIGHTS	6	35	19
III. DECLARATION OF SUCCESSOR STATUS	2	7	3
IV. DECLARATION THAT STRIKE UNLAWFUL	3	28	9
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	11	-
VI. CONSENT TO PROSECUTE	8	54	42
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	15	89	63
VIII. MISCELLANEOUS	5	41	22
TOTAL	<u>132</u>	<u>775</u>	<u>664</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	SEPTEMBER 1967	1ST 6 MTHS FISCAL YR. 1967-68	1966-67	SEPTEMBER 1967	1ST 6 MTHS FISCAL YR. 1967-68	1966-67
<u>I. CERTIFICATION</u>						
GRANTED	50	357	365	1668	10106	9571
DISMISSED	30	110	88	3763	7780	8015
WITHDRAWN	13	43	53	443	994	742
TOTAL	<u>93</u>	<u>510</u>	<u>506</u>	<u>5874</u>	<u>18880</u>	<u>18328</u>
<u>II. TERMINATION OF BARGAINING RIGHTS</u>						
GRANTED	3	18	12	68	255	460
DISMISSED	3	16	7	44	684	187
WITHDRAWN	-	1	-	-	1	-
TOTAL	<u>6</u>	<u>35</u>	<u>19</u>	<u>112</u>	<u>940</u>	<u>647</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

<u>NUMBER OF APPLICATIONS</u>		
<u>SEPTEMBER</u>	<u>1ST 6 MONTHS</u>	<u>FISCAL YR.</u>
<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>

III. DECLARATION THAT STRIKE  
UNLAWFUL

GRANTED	-	1	2
DISMISSED	1	3	-
WITHDRAWN	2	24	7
	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	<u>3</u>	<u>28</u>	<u>9</u>

IV. DECLARATION THAT LOCKOUT  
UNLAWFUL

GRANTED	-	-	-
DISMISSED	-	1	-
WITHDRAWN	-	10	-
	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	<u>-</u>	<u>11</u>	<u>-</u>

V. CONSENT TO PROSECUTE

GRANTED		5	6
DISMISSED	4	8	4
WITHDRAWN	4	41	32
	<u>4</u>	<u>41</u>	<u>32</u>
TOTAL	<u>8</u>	<u>54</u>	<u>42</u>



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	SEPTEMBER 1967	1ST 6 MONTHS 1967-68	FISCAL YR. 1966-67
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	9	8
POST-HEARING VOTE	1	24	19
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	6	4
POST-HEARING VOTE	7	21	35
BALLOTS NOT COUNTED	1	1	-
TOTAL	<u>11</u>	<u>61</u>	<u>66</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	SEPTEMBER 1967	1ST 6 MONTHS 1967-68	FISCAL YR. 1966-67
*RESPONDENT UNION SUCCESSFUL	3	4	4
RESPONDENT UNION UNSUCCESSFUL	3	11	9
	<u>6</u>	<u>15</u>	<u>13</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

OCTOBER 1967



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ONTARIO LABOUR RELATIONS BOARD



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING OCTOBER 1967

BARGAINING AGENTS CERTIFIED DURING OCTOBER

NO VOTE CONDUCTED

12923-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. JONES & LAUGHLIN MINING COMPANY, LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, TECHNICAL AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS ADAMS MINE IN THE TOWNSHIP OF BOSTON, SAVE AND EXCEPT SUPERVISORS; PERSONS ABOVE THE RANK OF SUPERVISOR; ONE SECRETARY TO EACH OF THE FOLLOWING: GENERAL MANAGER; MANAGER OF FINANCIAL CONTROL, AND PERSONNEL MANAGER; PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK; STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD; STUDENTS EMPLOYED AS PART OF A SCHOOL INDUSTRY COOPERATIVE WORK STUDY PROGRAM; SECURITY GUARDS; AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (42 EMPLOYEES IN THE UNIT).

13072-67-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. TWIN CITY GAS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS OPERATIONS DEPARTMENT IN THE CITIES OF PORT ARTHUR AND FORT WILLIAM AND THE TOWNSHIPS OF SHUNIAH AND NEEBING IN THE THUNDER BAY DISTRICT, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, CONFIDENTIAL CLERK TO THE DIVISIONAL SUPERINTENDENT AND THOSE EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 9-790 OIL, CHEMICAL AND ATOMIC WORKERS' INTERNATIONAL UNION." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 642).

13073-67-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. TWIN CITY GAS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR AND FORT WILLIAM, SAVE AND EXCEPT OFFICE SUPERVISORS, PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR, AND CONFIDENTIAL SECRETARY TO THE GENERAL MANAGER." (14 EMPLOYEES IN THE UNIT).

13112-67-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 756 - A.F.L. - C.I.O.-C.L.C. (APPLICANT) v. DOMINION SPORT-SERVICE LIMITED (RESPONDENT).

UNIT #1: "ALL BARTENDERS, BEVERAGE ROOM WAITERS, BAR BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT IN ITS OPERATION AT FORT ERIE RACETRACK IN BERTIE TOWNSHIP, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (26 EMPLOYEES IN THE UNIT).

(CERTIFIED).

UNIT #2: "ALL BARTENDERS, BEVERAGE ROOM WAITERS, BAR BOYS AND IMPROVERS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN THE EMPLOY OF THE RESPONDENT AT ITS OPERATION AT FORT ERIE RACETRACK IN BERTIE TOWNSHIP, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER." (12 EMPLOYEES IN THE UNIT).

(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 645).

13278-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (APPLICANT) V. NU-WAY LAUNDRY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR AND FORT WILLIAM, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, DRIVERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (52 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13358-67-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. COUNTY NEWSPAPERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS NEWSPAPER AND JOB PRINTING COMPOSING AND PRESS ROOMS AT THE DUNNVILLE CHRONICLE IN DUNNVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13372-67-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, C.L.C. (APPLICANT) V. THIESS MACHINERY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT MANAGERS AND PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

13448-67-R: NURSES' ASSOCIATION HAMILTON CIVIC HOSPITALS (APPLICANT) V. THE HAMILTON CIVIC HOSPITALS (RESPONDENT).



UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT ENGAGED IN NURSING AND TEACHING, SAVE AND EXCEPT HEAD-NURSES (WHO EXERCISE MANAGERIAL FUNCTIONS), PERSONS ABOVE THE RANK OF HEAD NURSE (WHO EXERCISE MANAGERIAL FUNCTIONS), EDUCATIONAL CO-ORDINATOR (SCHOOL OF NURSING), HEART-LUNG CO-ORDINATOR, SUPERVISORS OF EMPLOYEES' HEALTH, DEAN, ASSISTANT DEAN, MINI X-RAY NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (544 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT EMPLOYEES BEARING THE FOLLOWING CLASSIFICATIONS ARE INCLUDED IN THE BARGAINING UNIT SET OUT IN THE PRECEDING PARAGRAPH: NURSE CLINICIANS, HEAD NURSES - O.R., HEAD NURSE - C.S.R. - MATERNITY, EDUCATIONAL CO-ORDINATORS (HOSPITALS), STAFFING CO-ORDINATORS, INSTRUCTORS, CLINICAL INSTRUCTORS - O.R. AND REGISTRAR.

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK, ENGAGED IN NURSING AND TEACHING, SAVE AND EXCEPT HEAD-NURSES (WHO EXERCISE MANAGERIAL FUNCTIONS), PERSONS ABOVE THE RANK OF HEAD NURSE (WHO EXERCISE MANAGERIAL FUNCTIONS), EDUCATIONAL CO-ORDINATOR (SCHOOL OF NURSING), HEART-LUNG CO-ORDINATOR, SUPERVISORS OF EMPLOYEES' HEALTH, DEAN, ASSISTANT DEAN, MINI X-RAY NURSE." (299 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT EMPLOYEES BEARING THE FOLLOWING CLASSIFICATIONS ARE INCLUDED IN THE BARGAINING UNIT SET OUT IN THE PRECEDING PARAGRAPH: NURSE CLINICIANS, HEAD NURSES - O.R., HEAD NURSE - C.S.R. - MATERNITY, EDUCATIONAL CO-ORDINATORS (HOSPITALS), STAFFING CO-ORDINATORS, INSTRUCTORS, CLINICAL INSTRUCTORS - O.R., AND REGISTRAR.

13465-67-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204 (APPLICANT) V. TRITON CENTRES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN MAINTENANCE AND CLEANING OF YORKDALE SHOPPING CENTRE IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796." (16 EMPLOYEES IN THE UNIT).

13477-67-R: HAMILTON TYPOGRAPHICAL UNION NO. 129 (APPLICANT) V. SUPERIOR ENGRAVERS LIMITED (RESPONDENT) V. LITHOGRAPHERS AND PHOTO-ENGRAVERS INTERNATIONAL UNION, LOCAL 35-P (TORONTO) AND LOCAL 242 (HAMILTON, FORMERLY 42-L) (INTERVENERS).

UNIT: "ALL EMPLOYEES PERFORMING COMPOSING ROOM WORK OF THE RESPONDENT AT ITS PLANT AT HAMILTON, INCLUDING MARK-UP OF COPY OPERATION OF ALL PHOTO-TYPESETTING MACHINES AND MACHINE MAINTENANCE, PART TIME DARK-ROOM OPERATIONS IN

OPERATIONS IN CONNECTION WITH PROCESSING OF THE PRODUCT OF THE PHOTO-TYPESETTING MACHINES, PROOFING, PROOFREADING AND CORRECTING, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS PERFORMING POSITIONING OF PHOTOGRAPHIC PRINTS OF TYPE AND ILLUSTRATIONS IN ART WORK, AND PERSONS SOLELY ENGAGED IN DARK-ROOM OPERATIONS." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 647).

13485-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. FOX THE TAILOR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

13582-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PRIVATE SECRETARY TO THE GENERAL MANAGER, PRIVATE SECRETARY TO THE PERSONNEL OFFICER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (129 EMPLOYEES IN THE UNIT).

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT METER READERS, COLLECTORS AND INSPECTORS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

13591-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) V. FOLEY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND AUGUSTA IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13595-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. WESTWOOD DRAIN COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (14 EMPLOYEES IN THE UNIT).

13623-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13631-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORTHERN ONTARIO NATURAL GAS, DIVISION OF NORTHERN AND CENTRAL GAS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

13638-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CORNWALL GRAVEL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (37 EMPLOYEES IN THE UNIT).

13641-67-R: NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL (APPLICANT) V. SISTERS OF ST. JOSEPH, ST. JOSEPH'S HOSPITAL, GUELPH, ONTARIO (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED IN A NURSING CAPACITY BY THE RESPONDENT AT ITS HOSPITAL IN GUELPH, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (127 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13642-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. GRANITE CLUB LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AT THE BOILER ROOM OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER," (6 EMPLOYEES IN THE UNIT).

13643-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #2737 (APPLICANT) V. W. STARK LUMBER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

13650-67-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. SALADA FOODS LTD (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ALLISTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CLASSIFICATIONS OF PERSONNEL CLERK, SECRETARY TO THE GENERAL MANAGER, SECRETARY TO THE CONTROLLER AND THE PLANT MANAGER AND TECHNICAL PERSONNEL DOING DEVELOPMENT WORK, FALL WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

13664-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BARICH & WIKKERINK ELECTRIC (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE RESPONDENT'S ELECTRICAL OPERATIONS IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13667-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BARBER BARREL AND DRUM COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND THOSE EMPLOYEES COVERED BY THE CERTIFICATE DATED SEPTEMBER 14TH, 1967." (6 EMPLOYEES IN THE UNIT).

13673-67-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE PURITY DAIRIES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT OFFICE MANAGER, PERSONNEL MANAGER, CREDIT MANAGER, I.B.M. DEPARTMENT SUPERVISOR, PERSONS ABOVE THE RANK OF OFFICE MANAGER, PERSONNEL MANAGER, CREDIT MANAGER AND I.B.M. DEPARTMENT SUPERVISOR; ACCOUNTANT, CONFIDENTIAL SECRETARIES, MERCHANDISING SALES REPRESENTATIVES, SENIOR SALES SUPERVISORS AND FIELD REPRESENTATIVES." (16 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13674-67-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. GATEWAY BUILDING & SUPPLY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).



13682-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COCHRANE-DUNLOP HARDWARE, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (88 EMPLOYEES IN THE UNIT).

13683-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. R. FORMS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13692-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. PENFOUND VARNISH COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD," (18 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT LABORATORY EMPLOYEES ARE NOT INCLUDED IN THE BARGAINING UNIT.

13697-67-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (RESPONDENT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, BSEIU AFFILIATED WITH A.F.L.-C.I.O.-C.L.C. (INTERVENER).

UNIT: "ALL ROUTE SALESMEN EMPLOYED BY THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALESMEN AND SERVICE PERSONNEL, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (19 EMPLOYEES IN THE UNIT).

13700-67-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U., A.F.L.-C.I.O., C.L.C. (APPLICANT) V. ST. MARY'S GENERAL HOSPITAL (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS (ON BEHALF OF LOCAL 104) (INTERVENER).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS (ON BEHALF OF LOCAL 104)." (315 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

13702-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. H. BERNARD (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

13703-67-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. D. COAD CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, GRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE BOARD'S GENERAL POLICY TO AVOID DESCRIBING A BARGAINING UNIT IN TERMS OF "ALL EMPLOYEES" AND TO RESTRICT THE UNIT TO THE TRADES ON THE JOB.

13704-67-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. RAYMOND POULIN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BUSH OPERATIONS IN THE TOWNSHIP OF ROCHE AND TOWNSHIPS IMMEDIATELY ADJACENT THERETO, IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT).

13711-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) V. FRANRO ENGINEERING LIMITED & ASSOCIATES (RESPONDENT)  
RAYBAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13717-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) V. PEACOCK CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13718-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA  
(APPLICANT) V. ED. WITMER & SONS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

13719-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T.,  
(APPLICANT) V. BLUE RIBBON CONCRETE MATERIALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT)

13720-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. B & N DOOR MANUFACTURING COMPANY OF CANADA LIMITED (RESPONDENT) GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN CHATHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

13732-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BRANTFORD AND DISTRICT CIVIC CENTRE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(11 EMPLOYEES IN THE UNIT).

13733-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. REFLEX CORPORATION OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(71 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY IN THE INSTANT CASE, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "FOREMEN" INCLUDES MOULDING FOREMEN.

13734-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT RENFREW, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (14 EMPLOYEES IN THE UNIT).

13735-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT SMITHS' FALLS, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (3 EMPLOYEES IN THE UNIT).

13739-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CANADA CATERING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILLHAVEN FIBRES LIMITED AT MILLHAVEN, SAVE AND EXCEPT CAFETERIA MANAGER AND PERSONS ABOVE THE RANK OF CAFETERIA MANAGER." (14 EMPLOYEES IN THE UNIT).

13741-67-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION No. 1919 (APPLICANT) V. WATSON'S GLASS LTD. (RESPONDENT).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN



THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13742-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. A. B. & LAFORTUNE CONTRACTORS GENERAL FORMING (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13745-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DEWCON STRUCTURES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13749-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. COPELAND REFRIGERATION OF CANADA, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (19 EMPLOYEES IN THE UNIT).

13750-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR, AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

13775-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. G & H STEEL CO. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

13652-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. STEWART-WARNER CORPORATION OF CANADA LIMITED (RESPONDENT) V. S. W. A. C. O. EMPLOYEES' GUILD (INTERVENER #1) V. OFFICE & GENERAL EMPLOYEES ASSOCIATION OF STEWART-WARNER CORPORATION OF CANADA LTD. (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK FOREMAN, OFFICE AND SALES STAFF, AND SECURITY GUARDS." (126 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	119
NUMBER OF PERSONS WHO CAST BALLOTS	119
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	76
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1 STEWART-WARNER ALEMITE COMPANY EMPLOYEES' GUILD	43

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TIME STUDY ENGINEER, ENGINEERING DEPARTMENT PERSONNEL, CANTEEN SUPERVISOR, SERVICE MANAGER AND FIRST-AID SUPERVISOR ARE NOT INCLUDED IN THE BARGAINING UNIT.

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

13499-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. QUEENSWAY GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETICIANS, UNDERGRADUATE DIETICIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, STATIONARY ENGINEERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT, SECURITY GUARDS, OFFICE AND CLERICAL STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (284 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	176
NUMBER OF PERSONS WHO CAST BALLOTS	159
BALLOTS SEGREGATED AND NOT COUNTED	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	141
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13

13589-67-R: NURSES' ASSOCIATION BELLEVILLE GENERAL HOSPITAL (APPLICANT)  
V. BELLEVILLE GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT BELLEVILLE ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT ASSISTANT SUPERVISORS AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR."  
(181 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	142
NUMBER OF PERSONS WHO CAST BALLOTS	131
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	128
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

13613-67-R: REDI-STEEL EMPLOYEES ASSOCIATION (APPLICANT) V. REDI-STEEL  
PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(46 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	37
NUMBER OF PERSONS WHO CAST BALLOTS	37
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	25
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERNATIONAL ASSOCIATION OF	
MACHINISTS AND AEROSPACE WORKERS	11

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

NO VOTE CONDUCTED

13523-67-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE  
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. AFL-CIO-CLC  
(APPLICANT) V. MALETTE LUMBER LIMITED (RESPONDENT). V. GROUP OF EMPLOYEES  
(OBJECTORS). (32 EMPLOYEES).

13659-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419,  
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. IMPERIAL AUTO WASH  
AND PARKING STATIONS (RESPONDENT) V. WELDERS, PUBLIC GARAGE EMPLOYEES,  
MOTOR MECHANICS AND ALLIED WORKERS, LOCAL UNION 847 (INTERVENER) V.  
GROUP OF EMPLOYEES (OBJECTORS). (28 EMPLOYEES).

13666-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. E-ZEE PARKING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (18 EMPLOYEES).

13671-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GENERAL FREEZER LIMITED (RESPONDENT). (194 EMPLOYEES).

13676-67-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL #10 (APPLICANT) V. SPADA TILE LTD. (RESPONDENT) V. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (INTERVENER). (8 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 650).

13689-67-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. BEAVER FOUNDATION LTD. (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 652).

13729-67-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (APPLICANT) V. INTERNATIONAL HARDWARE COMPANY OF CANADA (1963) LIMITED (RESPONDENT). (51 EMPLOYEES).

12830-66-R: LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. I. W. WOOD PRODUCT LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (19 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

13651-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. EMPIRE REALTY COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT AT 44 KING STREET WEST, IN TORONTO IN ITS BOILER ROOM, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	3



CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13507-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. INDUSTRIAL DISPOSAL LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	11

13532-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. WENTWORTH MOULD & DIE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	34
NUMBER OF PERSONS WHO CAST BALLOTS	32
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	11
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	21

13576-67-R: GENERAL TRUCK DRIVERS UNION LOCAL 938, AFFILIATED WITH THE I.B. OF T.C.W. AND H. OF AMERICA (APPLICANT) V. J. E. ADAMS CARTAGE & STORAGE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	11

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

13731-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RUFF CLARKSON COMPANY LIMITED (RESPONDENT). (29 EMPLOYEES).

13736-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 (APPLICANT) V. FORT WILLIAM BOARD OF EDUCATION (RESPONDENT). (12 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING OCTOBER

13777-67-R: MRS. MADELINE WHEELER (APPLICANT) V. FUR & LEATHER WORKERS UNION, LOCAL 82, AMC & BW OF NA, AFL-CIO (RESPONDENT) V. COOPER-WEEKS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF COOPER-WEEKS LIMITED AT ITS 47 ORFUS ROAD PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (50 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	46
NUMBER OF PERSONS WHO CAST BALLOTS	46
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	4
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	42

13646-67-R: DEERFIELD LAMINATIONS LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (21 EMPLOYEES). (DISMISSED).

13647-67-R: DEERFIELD PLASTICS LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (32 EMPLOYEES). (DISMISSED).

13714-67-R: BLH-BERTRAM LTD. (APPLICANT) V. THE INTERNATIONAL MOLDERS' AND ALLIED WORKERS UNION (RESPONDENT). (DISMISSED).

- AND -

13715-67-R: BLH-BERTRAM LTD. (APPLICANT) V. PATTERN MAKERS ASSOCIATION OF HAMILTON AND VICINITY (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 652).

13795-67-R: EMPLOYEES OF EMMONS TOOL & DIE (JACK BURROWS) (APPLICANT) V. UNITED AUTO WORKERS (RESPONDENT). (40 EMPLOYEES). (WITHDRAWN).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING OCTOBER

13726-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. GAMBLE ROBINSON, LIMITED (RESPONDENT) V. THE SUDBURY GENERAL WORKERS UNION, LOCAL 101 (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING OCTOBER

13053-67-U: THE GOODYEAR TIRE & RUBBER COMPANY OF CANADA, LIMITED (APPLICANT) V. MEMBERS OF LOCAL 232, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, EMPLOYED AT THE APPLICANT'S NEW TORONTO FACTORY LOCATED AT 3050 LAKESHORE BLVD. WEST, NEW TORONTO AND THE CENTRAL DISTRIBUTING WAREHOUSE LOCATED ON KIPLING AVENUE, SOUTH, TORONTO 18: K. McDONALD, B. GALLANT, W. FLINT, L. DONOHUE, R. LA LONDE, W. THIELE, R. LUTTRELL, E. LIVELY, C. BARTLETT, R. POPP, C. WILLIAMS, D. LA POINTE, C. NAYLOR, P. KARPUK, W. BOLTON, J. BLAGDON, M. DELANEY, J. LANNING, E. ILES, C. BAUER, P. BODNAR, G. QUICK, A. PORCHUN, D. CRAWFORD, F. DESJARDINS, H. GRAHAM, T. HOWARD, A. MCPHERSON, G. WISEMAN, L. GAUVIN, B. BOURQUE, J. PHILLIPS, J. SOLOMAN, A. MACEACHERN, D. HELMER, C. NAEF, D. PARSONS, D. HALL, J. LABLOND, T. CRAIG, G. ARMSTRONG, R. CHAMBERS, K. WHYTE, J. LAWRENCE, J. CORMIER, C. LACROIX, P. COLES, A. WINTERSINGER, K. HALLORAN, C. MARACLE, L. BROWN, S. BACKS, F. JAMES, O. FERGUSON, W. DUNSFORD, R. DOBBIN, R. NOWLAN, R. ROBINSON, W. CHASE, W. MCKINNON, R. CORRIGAN, H. MOULTON, J. MALISCH, T. CHISHOLM, L. DOIRON, G. FABRI, A. MORRISON, K. MORGAN, P. HAFFENDEN, L. O'SHAUGHNESSY, G. MCCULLIGH, N. RICHARD, M. CURTIS, C. ADAMSON, C. SAYERS, M. DUVAL, V. LOUGHEED. (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 655).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

13203-67-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206 (APPLICANT) V. JANETTE IGA, MRS. L. JAWORSKY AND BORIS J. SOROKIWSKY (RESPONDENTS). (WITHDRAWN).

13348-67-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) V. CERTAIN EMPLOYEES OF THE APPLICANT - MEMBERS OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA NAMED ON THE ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

13453-67-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO (APPLICANT) V. GARTH ANDERSON ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

OCTOBER

12823-66-U: WALTER URBANOWICZ (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 120, W. A. NICHOLLS AND FRED TURNER (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 657 ).

13256-67-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. NATLIE KNITTING MILLS (RESPONDENT). (WITHDRAWN).

13257-67-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. NATLIE KNITTING MILLS (RESPONDENT). (WITHDRAWN).

13305-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. G. W. MARTIN LUMBER LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 659 ).

13354-67-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. NATLIE KNITTING MILLS (RESPONDENT). (WITHDRAWN).

13400-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GENERAL FREEZER LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 659 ).

13406-67-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. NATLIE KNITTING MILLS (RESPONDENT). (WITHDRAWN).

13407-67-U: GEO. W. LESLIE (COMPLAINANT) V. ALLIED TOWERS' MERCHANTS LTD. TORONTO ONT. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 662 ).

13415-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. HUMBER MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 663 ).

13437-67-U: EDWARD A. WILSON (COMPLAINANT) V. LOCAL-OFFICERS OF 582 AND WALTER KENSIT (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 666 ).

13454-67-U: EDWARD A. WILSON (COMPLAINANT) V. DOMINION STORES LTD STORE SUPERVISOR MR. JOE TRECO (RESPONDENTS). (DISMISSED).

- AND -

13455-67-U: EDWARD A. WILSON (COMPLAINANT) V. DOMINION STORES LTD 105 DURHAM ST SUDBURY ONTARIO DISTRICT MANAGER MR. J. A. MALCOLM (RESPONDENTS). (DISMISSED).



(THE ABOVE APPLICATION ARE CONSOLIDATED).

13488-67-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (COMPLAINANT) V. CARL J. LEHMAN & SONS LIMITED (RESPONDENT). (WITHDRAWN).

13514-67-U: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 AFFILIATED WITH: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL-CIO, C.L.C., AND WINDOR & DISTRICT LABOUR COUNCIL (COMPLAINANT), V. SATELLITE RESTAURANT (RESPONDENT). (WITHDRAWN).

13565-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. FENWICK AUTOMOTIVE PRODUCTS (RESPONDENT). (WITHDRAWN).

13578-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. FENWICK AUTOMOTIVE PRODUCTS (RESPONDENT). (WITHDRAWN).

13593-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL (RESPONDENT). (WITHDRAWN).

13670-67-U: LOCAL 12-L LITHOGRAPHERS & PHOTO-ENGRAVERS INTERNATIONAL UNION (COMPLAINANT) V. W. R. DRAPER COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

13685-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. CANADIAN MOULDINGS LTD. (RESPONDENT). (WITHDRAWN).

13690-67-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. NORWICH PHARMACAL COMPANY LTD. (RESPONDENT). (WITHDRAWN).

13710-67-U: MR. ANTHONY CAWLEY (COMPLAINANT) V. ELECTRO VOX INC. (RESPONDENT). (DISMISSED).

13738-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. H. BERNARD (CANADA) LTD. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

13698-67-M: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC, LOCAL 292, AND MONSANTO CANADA LIMITED (APPLICANTS). (GRANTED).

13699-67-M: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA AND LOCAL 292 OF THE UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AND MONSANTO CANADA LIMITED, (OAKVILLE PLANT) (APPLICANTS). (GRANTED).

13722-67-M: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS LOCAL 28, AND W. J. GAGE LIMITED (APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING OCTOBER

13661-67-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL-CIO-CLC, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. ESARES HOTEL ENTERPRISES LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 670).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF

DURING OCTOBER

13612-67-M: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U.-A.F. OF L.-C.I.O.-C.L.C. (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT).

JURISDICTIONAL DISPUTES

13140-67-JD: FRANKI CANADA LIMITED (COMPLAINANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 183, TORONTO AND THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506, MICHAEL J. REILLY AND ED. LINESS (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 671).

13156A-67-JD: JOHN N. BROCKLESBY TRANSPORT LIMITED (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS - LOCAL 419 INTERNATIONAL BROTHERHOOD OF OPERATING ENGINEERS - LOCAL 793 (RESPONDENTS).

13584(A)-67-JD: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 865 (COMPLAINANT) V. PROVINCIAL PAPER, LIMITED, PORT ARTHUR DIVISION AND INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER MILL WORKERS, LOCAL UNION NO. 40 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 672).

13730-67-JD(A): CARPENTERS' DISTRICT COUNCIL OF TORONTO & VICINITY (COMPLAINANT) V. REDFERN CONSTRUCTION COMPANY LTD. (RESPONDENT).

REQUESTS FOR REVIEW

12823-66-U: WALTER URBANOWICZ (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 120, W. A. NICHOLLS AND FRED TURNER (RESPONDENTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 676 ).

12926-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. RUBBERMAID (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 677).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13115-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. (APPLICANT) V. D'ANGELO PLASTERING Co. LTD. (DOMENICO D'ANGELO) (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 682).

INDEXED ENDORSEMENTS - CERTIFICATION

13072-67-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. TWIN CITY GAS COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: R. S. BASKEN FOR THE APPLICANT, AND  
S. R. ELLIS FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFFE: OCTOBER 5, 1967.

...

3. AT THE TIME OF THE APPLICATION THERE EXISTED A COLLECTIVE AGREEMENT BETWEEN LOCAL 9-790 OIL, CHEMICAL AND ATOMIC WORKERS' INTERNATIONAL UNION AND THE RESPONDENT. THE AGREEMENT RECOGNIZES THE UNION, THE APPLICANT HEREIN, AS "BEING THE SOLE BARGAINING REPRESENTATIVE FOR EMPLOYEES OF THE COMPANY IN ITS OPERATIONS DEPARTMENT IN THE CITIES OF PORT ARTHUR AND FORT WILLIAM AND THE TOWNSHIPS OF SHUNIAH AND NEEBING IN THE THUNDER BAY DISTRICT SAVE AND EXCEPT ASSISTANT SUPERVISORS OR FOREMEN, INSPECTORS AND CONFIDENTIAL CLERK TO THE DIVISIONAL SUPERINTENDENT. -". THE AGREEMENT IS DATED DECEMBER 29TH, 1966, AND IS EFFECTIVE UNTIL DECEMBER 31ST, 1968, AND THEREAFTER UNTIL REVISED OR TERMINATED.

4. THE BARGAINING UNIT IS BASED UPON THAT SET OUT IN A CERTIFICATE ISSUED BY THE ONTARIO LABOUR RELATIONS BOARD TO THE PREDECESSOR OF THE PRESENT APPLICANT, DATED SEPTEMBER 30TH, 1963.

(SUCCESSOR STATUS WAS GRANTED TO THE APPLICANT BY THE BOARD ON NOVEMBER 15TH, 1966). THE UNIT IS DESCRIBED IN THE CERTIFICATE AS FOLLOWS:-

- - ALL EMPLOYEES OF THE RESPONDENT IN ITS OPERATIONS DEPARTMENT IN THE CITIES OF PORT ARTHUR AND FORT WILLIAM AND THE TOWNSHIPS OF SHUNIAH AND NEEBING, IN THE THUNDER BAY DISTRICT, SAVE AND EXCEPT ASSISTANT SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR, INSPECTORS AND CONFIDENTIAL SECRETARY TO THE DIVISIONAL SUPERINTENDENT, - -.

5. THE CERTIFICATE, AS IT INDICATES, IS TO BE READ SUBJECT TO THE TERMS OF THE ENDORSEMENT ON THE RECORD. THAT ENDORSEMENT STATES THAT THE BARGAINING UNIT IS DESCRIBED "HAVING REGARD TO THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT".

6. THERE IS NOTHING IN THE CERTIFICATE OR THE ENDORSEMENT ON THE RECORD TO INDICATE ON WHAT BASIS THE PARTIES AGREED TO THE EXCLUSION OF INSPECTORS FROM THE BARGAINING UNIT. THE PRESENT APPLICANT WAS NOT, AS INDICATED ABOVE, A PARTY TO THE ORIGINAL AGREEMENT. IT IS OPEN TO QUESTION WHETHER THE AGREEMENT WAS REACHED ON THE BASIS OF SECTION 1 (3)(B) OR THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT.

7. IT WAS CONTENDED BY THE COMPANY THAT THE EXCLUSION OF THE INSPECTORS WAS PROBABLY ON THE GROUNDS THAT THEY EXERCISED MANAGERIAL FUNCTIONS, AND IT WAS ITS POSITION THAT THE DUTIES OF INSPECTORS HAD NOT CHANGED SINCE THAT TIME AND THAT THEY SHOULD BE FOUND BY THE BOARD NOT TO BE EMPLOYEES UNDER THE ACT BECAUSE THEY EXERCISE MANAGERIAL FUNCTIONS. THE UNION DENIED THAT THE INSPECTORS EXERCISE MANAGERIAL FUNCTIONS. THE BOARD, THEREFORE, APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF ALL PERSONS CLASSIFIED AS INSPECTORS.

8. THE REPORT OF THE EXAMINER IS DATED THE 24TH OF JULY, 1967. THE RESPONDENT FILED A STATEMENT OF DESIRE, DATED AUGUST 1ST, 1967, IN WHICH IT RAISED OBJECTIONS TO THE ACCURACY OF THE REPORT AND SOUGHT TO MAKE REPRESENTATIONS THERETO AND WITH RESPECT TO THE CONCLUSIONS THE BOARD SHOULD REACH IN VIEW OF THE REPORT. THE MATTER WAS HEARD BY THE BOARD ON SEPTEMBER 13TH, 1967. AT THE HEARING THE RESPONDENT'S OBJECTIONS TO THE ACCURACY OF CERTAIN DETAILS IN THE REPORT WERE SETTLED AND THE REPORT AMENDED ACCORDINGLY. REPRESENTATIONS WERE MADE BY BOTH PARTIES ON THE BASIS OF THE AMENDED REPORT WITH RESPECT TO THE CONCLUSIONS WHICH EACH PARTY FELT THE BOARD SHOULD REACH.

9. HAVING REGARD TO THE WHOLE OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND TO WHAT WAS ARGUED BY COUNSEL FOR THE COMPANY AND THE REPRESENTATIVE OF THE APPLICANT, THE BOARD



FINDS THAT THE INSPECTORS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE ENTITLED TO BE INCLUDED IN ANY BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE.

10. THE APPLICANT HEREIN MADE A CONCURRENT APPLICATION FOR BARGAINING RIGHTS FOR THE OFFICE EMPLOYEES OF THE RESPONDENT. THE QUESTION AROSE AS TO WHETHER THE INSPECTORS, IF FOUND NOT TO EXERCISE MANAGERIAL FUNCTIONS, SHOULD BE INCLUDED IN THAT BARGAINING UNIT OR WHETHER IT WOULD BE APPROPRIATE TO ASSOCIATE THEM WITH THE OPERATIONS DEPARTMENT OF THE COMPANY AS REQUESTED BY THE UNION.

11. ON THE BASIS OF THE REPORT OF THE EXAMINER AND HAVING REGARD TO THE FACT THAT THE PARTIES TO THE COLLECTIVE AGREEMENT APPEAR TO ASSOCIATE THE INSPECTORS WITH THE OPERATIONS DEPARTMENT, THE BOARD FINDS THAT THAT IS THE UNIT APPROPRIATE FOR THE INSPECTORS.

12. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS OPERATIONS DEPARTMENT IN THE CITIES OF PORT ARTHUR AND FORT WILLIAM AND THE TOWNSHIPS OF SHUNIAH AND NEEBING IN THE THUNDER BAY DISTRICT, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, CONFIDENTIAL CLERK TO THE DIVISIONAL SUPERINTENDENT AND THOSE EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 9-790 OIL, CHEMICAL AND ATOMIC WORKERS' INTERNATIONAL UNION, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 11TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

OCTOBER 5, 1967.

I DISSENT. HAVING REGARD TO ALL THE FUNCTIONS PERFORMED BY THE INSPECTORS AS SET OUT IN THE EXAMINER'S REPORT, AND HAVING REGARD TO THE REPRESENTATIONS MADE BY THE RESPECTIVE PARTIES THEREON, I WOULD FIND THAT THE PERSONS CLASSIFIED AS "INSPECTORS" EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT APPROPRIATE FOR INCLUSION IN ANY BARGAINING UNIT. WHILE THEY ARE CLASSIFIED AS INSPECTORS IN THIS APPLICATION, THEY ARE AT OTHER TIMES ON THE JOB CLASSIFIED AS ENGINEERS. IN MY OPINION, AND I DO SO FIND, THEIR DUTIES AND RESPONSIBILITIES ARE FAR MORE EXTENSIVE THAN THOSE OF THE USUAL CLASS-

IFICATION OF INSPECTORS CONSIDERED BY THIS BOARD, AND ARE SUCH TO INCLUDE THEM IN THE CLASSIFICATION OF MANAGERIAL.

WHILE IT IS TRUE THAT COUNSEL FOR THE COMPANY WOULD NOT MAKE AN OUTRIGHT STATEMENT THAT THE INSPECTORS WERE EXCLUDED AS MANAGERIAL FROM THE AGREEMENT OF THE PARTIES IN THE APPLICATION BY THE PREDECESSOR APPLICANT, AS SET OUT IN THE MAJORITY DECISION, IT MUST ALSO BE SAID THAT HE FELT THIS WAS THE BASIS OF THE AGREEMENT.

IT IS INTERESTING TO NOTE THAT THE APPLICANT AGREED TO EXCLUDE INSPECTORS WHEN NEGOTIATING THEIR PRESENTLY EXISTING COLLECTIVE AGREEMENT AT THE OPERATIONS DEPARTMENT. WHILE THIS MAY NOT HAVE ANY AFFECT ON OUR DETERMINATION HEREIN, ONE MIGHT EASILY DRAW THE INFERENCE THAT THE APPLICANT ITSELF FELT THAT THESE INSPECTORS PERFORMED MANAGERIAL FUNCTIONS.

13112-67-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 756 - A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. DOMINION SPORT-SERVICE LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: JULY 27, 1967.

1. IN ACCORDANCE WITH THE DIRECTION SET OUT IN PARAGRAPH 2 OF THE ENDORSEMENT IN THIS MATTER, DATED JUNE 8TH, 1967, THE REGISTRAR SET JULY 11TH AS THE NEW TERMINAL DATE FOR THIS APPLICATION. NOTICE OF THE SETTING OF THIS DATE AND OF THE APPLICATION WAS POSTED UPON THE PREMISES OF THE RESPONDENT. NO NEW EVIDENCE HAS BEEN RECEIVED BY THE BOARD, NOR HAVE ANY OBJECTIONS OR OTHER REPRESENTATIONS BEEN MADE.

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3. THE BOARD FURTHER FINDS THAT ALL BARTENDERS, BEVERAGE ROOM WAITERS, BAR BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT IN ITS OPERATION AT FORT ERIE RACETRACK IN BERTIE TOWNSHIP, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3 ABOVE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 11TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77 (2) (J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT DESCRIBED IN PARAGRAPH 3.

6. THE BOARD FURTHER FINDS THAT ALL BARTENDERS, BEVERAGE ROOM WAITERS, BAR BOYS AND IMPROVERS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN THE EMPLOY OF THE RESPONDENT AT ITS OPERATION AT FORT ERIE RACETRACK IN BERTIE TOWNSHIP, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 6 ABOVE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 11TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77 (2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 6 ABOVE. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 12, 1967.

1. IN ITS ENDORSEMENT OF THE RECORD IN THIS MATTER, DATED JULY 27TH, 1967, THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 6 OF THAT ENDORSEMENT.

2. THE PARTIES HAVE NOW ADVISED THE BOARD THAT A COLLECTIVE AGREEMENT HAS BEEN MADE BETWEEN THEM COVERING EMPLOYEES IN THE BARGAINING UNIT ABOVE REFERRED TO. FOLLOWING THE BOARD'S USUAL PRACTICE IN SUCH CIRCUMSTANCES, THESE PROCEEDINGS ARE HEREBY TERMINATED.

13477-67-R: HAMILTON TYPOGRAPHICAL UNION No. 129 (APPLICANT) V. SUPERIOR ENGRAVERS LIMITED (RESPONDENT) V. LITHOGRAPHERS AND PHOTO-ENGRAVERS INTERNATIONAL UNION, LOCAL 35-P (TORONTO) AND LOCAL 242 (HAMILTON, FORMERLY 42-L) (INTERVENERS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: ALLAN HISTED AND CHARLES HALFPENNY FOR THE APPLICANT, H. F. PITTS FOR THE RESPONDENT, AND HENRY M. ASHWORTH, CLARK W. FAULKNER AND LESLIE J. YONG FOR THE INTERVENERS.

DECISION OF THE BOARD: OCTOBER 18, 1967.

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2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT SEEKS A BARGAINING UNIT DESCRIBED AS "ALL EMPLOYEES PERFORMING COMPOSING ROOM WORK AT SUPERIOR ENGRAVERS LIMITED (HAMILTON), INCLUDING MARKUP OF COPY, OPERATION OF ALL PHOTO-TYPESETTING MACHINES AND MACHINE MAINTENANCE, PROOFING, PROOF-READING AND CORRECTING, AND DARKROOM OPERATIONS IN CONNECTION WITH PROCESSING OF THE PRODUCT OF THE PHOTO-TYPESETTING MACHINES, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS PERFORMING POSITIONING OF PHOTOGRAPHIC PRINTS OF TYPE AND ILLUSTRATIONS IN ART WORK".

5. THE INTERVENERS FILED WITH THE BOARD SEPARATE COLLECTIVE AGREEMENTS MADE BETWEEN EACH OF THEM AND THE RESPONDENT. THAT BETWEEN LOCAL 42-L AND THE RESPONDENT IS NOT OF PRIMARY CONCERN IN THIS MATTER. IT HAS TO DO WITH COMMERCIAL ARTISTS.

6. THE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 35-P L.P.I.U., IN ITS RECOGNITION CLAUSE, STATES THAT THE UNION IS RECOGNIZED AS THE SOLE AND EXCLUSIVE BARGAINING AGENCY OF THE EMPLOYEES COVERED BY THE CONTRACT. ARTICLE 2 OF THE AGREEMENT UNDER THE HEADING "JURISDICTION" READS, INsofar AS IT IS RELEVANT HERE, AS FOLLOWS:

2.1 EMPLOYEES, INCLUDING SHOP SUPERINTENDENTS AND FOREMEN, ENGAGED TO DO WORK AS DEFINED IN 2.2 FOLLOWING SHALL BE EMPLOYED IN ACCORDANCE WITH TERMS AND CONDITIONS HEREINAFTER SET FORTH.

2.2 THE PROCESS OF PHOTO-ENGRAVING AND ITS ATTENDANT WORK THERETO IS DEFINED AS BEING, AND IS, ALL OPERATIONS OF THE PROCESS PERTAINING TO THE PRODUCTION OF PHOTO-ENGRAVING PLATES, PLATES FOR OFFSET, GRAVURE CYLINDERS AND PLATES OF ANY



SUBSTANCE OR MATERIAL FROM COPY OR FROM ORIGINALS AND/OR SUBJECTS WHEN FURNISHED IN LIEU OF COPY UP TO THE FINISHED PRODUCT.

2.3 ALL MATERIALS TO BE REPRODUCED FOR PRINTING PURPOSES SHALL SERVE AS COPY FOR THE CAMERA AND BE PROCESSED AND COMPLETED UNDER PRESENT OR FUTURE OPERATIONS BY EMPLOYEES COVERED BY THIS AGREEMENT.

2.4 THE JURISDICTION OF THE L.P.I.U. OVER THE PROCESS OF PHOTO-ENGRAVING AS DEFINED IN ARTICLE 2.2, INCLUDES PHOTOGRAPHY, OTHER THAN STUDIO WORK, THE HANDLING AND PROCESSING OF ALL NEGATIVES AND POSITIVES OF PHOTO-COMPOSED TYPE FILM OR OTHER COPY FOR REPRODUCTIVE PURPOSES; - -

7. IT IS THE POSITION OF LOCAL 35-P THAT THE PERSONS IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT ARE PERFORMING THE WORK SET OUT IN PARAGRAPH 2 OF THE AGREEMENT AND IN PARTICULAR THAT WORK REFERRED TO IN THE PORTION OF ARTICLE 2.4 REPRODUCED ABOVE.

8. THE PROPOSED UNIT, ACCORDING TO THE REPLY FILED BY THE RESPONDENT, INCLUDES THREE TYPESETTERS AND ONE PROCESSOR OF FILM. THE PROCESSOR OF FILM WORKS IN A DARK-ROOM, WHICH IMMEDIATELY ADJOINS THE ROOM IN WHICH THE FOTOSETTER MACHINES ARE OPERATED.

9. THE RESPONDENT SUBMITTED THAT THE SIGNING OF THE COLLECTIVE AGREEMENT BETWEEN IT AND LOCAL 35-P HAD BEEN CONDITIONAL UPON THE PRODUCTION BY THE UNION OF THE FOLLOWING LETTER, ADDRESSED TO THE RESPONDENT:

THE FOLLOWING LANGUAGE IS CONSIDERED TO BE A PART OF THE AGREEMENT BETWEEN YOUR COMPANY AND THE TORONTO PHOTO-ENGRAVERS' UNION.

"IT IS AGREED THAT THE OPERATION OF THE PHOTO SETTING EQUIPMENT AT SUPERIOR ENGRAVERS LIMITED AS PRESENTLY CONDUCTED WILL NOTBE CHANGED FOR THE DURATION OF THE PRESENT CONTRACT, WITHOUT CONSULTATION."

10. IT WAS COMMON GROUND THAT THE LETTER WAS A CONDITION PRECEDENT TO THE ACCEPTANCE BY THE COMPANY OF THE COLLECTIVE AGREEMENT, THE TEXT OF WHICH WAS ALREADY IN EXISTENCE.

11. MR. LESLIE J. YOUNG, SECRETARY-TREASURER FOR LOCAL 35-P TESTIFIED THAT THE GIVING OF THE LETTER WAS A TRADITIONAL MATTER BETWEEN THE LOCAL AND THE RESPONDENT. HE STATED THAT THE PRE-CONTRACT AGREEMENT, WHICH THE LETTER ATTEMPTS TO INCORPORATE, WAS THAT HIS UNION AGREED NOT TO INTERFERE WITH THE OPERATION OF THE PHOTO-SETTING MACHINES INSOFAR AS

THE KEY-BOARD WAS CONCERNED, BUT RESERVED THE RIGHT TO BARGAIN WITH RESPECT TO THE PROCESSING OF THE FILM. IT WOULD APPEAR THEREFORE THAT, AT A MINIMUM, THE PARTIES AGREED THAT THE TERMS OF THE COLLECTIVE AGREEMENT WOULD NOT APPLY TO THE PHOTO-SETTING OPERATION ITSELF AS IT EXISTED AT THE TIME THAT AGREEMENT WAS MADE.

12. THE BOARD, ON THE EVIDENCE ADDUCED AT THE HEARING AND UPON VIEWING THE OPERATIONS AT THE PLANT, FINDS THAT THE OPERATION OF THE EQUIPMENT, "AS PRESENTLY CONDUCTED", ENCOMPASSES THE INTERMITTENT USE OF THE DARK-ROOM BY THE TYPESETTERS FOR THE DEVELOPMENT OF THE FILM. THIS WORK IS PART OF THE REGULAR WORK OF THE TYPESETTERS AND TAKES UP ONE THIRD OF THEIR TOTAL TIME. THE BULK OF THE DARK-ROOM WORK IS DONE BY THE PROCESSOR OF FILM WHO TAKES NO PART WHATSOEVER IN THE TYPESETTING ITSELF.

13. IN THE BOARD'S OPINION THE EFFECT OF THE LETTER IS TO EXCLUDE FROM THE COVERAGE OF THE COLLECTIVE AGREEMENT THE WORK PRESENTLY BEING DONE BY THE TYPESETTERS, INCLUDING THEIR LIMITED USE OF THE DARK-ROOM. ON THE OTHER HAND, THAT AGREEMENT DOES NOT AFFECT THE COVERAGE OF THE COLLECTIVE AGREEMENT INSOFAR AS THE WORK OF THE PROCESSOR OF FILM IS CONCERNED AND IT, THE COLLECTIVE AGREEMENT, OPERATES AS AN EFFECTIVE BAR TO THE INCLUSION OF THE PROCESSOR OF FILM IN THE BARGAINING UNIT SOUGHT HEREIN.

14. HAVING REGARD TO THE COLLECTIVE AGREEMENT AS MODIFIED BY THE LETTER, THE REPRESENTATIONS OF THE PARTIES AND THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS THAT ALL EMPLOYEES PERFORMING COMPOSING ROOM WORK OF THE RESPONDENT AT ITS PLANT AT HAMILTON, INCLUDING MARK-UP OF COPY OPERATION OF ALL PHOTO-TYPESETTING MACHINES AND MACHINE MAINTENANCE, PART TIME DARK-ROOM OPERATIONS IN CONNECTION WITH PROCESSING OF THE PRODUCT OF THE PHOTO-TYPESETTING MACHINES, PROOFING, PROOFREADING AND CORRECTING, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS PERFORMING POSITIONING OF PHOTOGRAPHIC PRINTS OF TYPE AND ILLUSTRATIONS IN ART WORK, AND PERSONS SOLELY ENGAGED IN DARK-ROOM OPERATIONS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 15TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13676-67-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL #10 (APPLICANT) V. SPADA TILE LTD. (RESPONDENT) V. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: J. B. WATERMAN, D. WILLIAMS AND M. QUESNEL FOR THE APPLICANT, A. SPADA, M. AFECTO AND A. DE SOUSA FOR THE RESPONDENT, G. MOULTON AND O. D'AGOSTINI FOR THE INTERVENER.

DECISION OF THE BOARD: OCTOBER 25, 1967.

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5. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL GRINDERS IN THE EMPLOY OF THE RESPONDENT IN A GEOGRAPHIC AREA WHICH IS NOT RELEVANT FOR PURPOSES OF THIS DECISION.

6. THE RESPONDENT COMPANY IS IN THE BUSINESS OF INSTALLING MARBLE, TILE AND TERRAZZO IN BUILDINGS. IT ALSO LAYS SIDEWALKS, CURBS AND GUTTERS. THE RESPONDENT HAD IN ITS EMPLOY AS OF THE DATE OF APPLICATION THIRTY-EIGHT EMPLOYEES WHOM IT CONSIDERS TO BE LABOURERS AND SKILLED LABOURERS. INCLUDED ON THIS LIST ARE EIGHT EMPLOYEES CLASSIFIED AS EITHER WET OR DRY GRINDERS. IT IS THESE EMPLOYEES WHO ARE THE SUBJECT OF THE INSTANT APPLICATION. THE RESPONDENT ALSO HAD IN ITS EMPLOY AS OF THE DATE OF APPLICATION APPROXIMATELY TEN MARBLE, TILE AND TERRAZZO MECHANICS.

7. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A CURRENT COLLECTIVE AGREEMENT COVERING ALL MARBLE, TILE AND TERRAZZO MECHANICS AND MECHANIC APPRENTICES. THE INTERVENER AND THE RESPONDENT ARE ALSO PARTIES TO A CURRENT COLLECTIVE AGREEMENT WHICH COVERS ALL LABOURERS AND SKILLED LABOURERS IN THE EMPLOY OF THE RESPONDENT. BY APPENDIX "B" OF THIS AGREEMENT WHICH IS DATED SEPTEMBER 6TH, 1967, THE PARTIES PURPORT TO INCLUDE GRINDERS IN THE BARGAINING UNIT COVERED BY THE AGREEMENT. THE RESPONDENT AND THE INTERVENER ADMIT THAT THE GRINDERS WERE NOT REPRESENTED BY THE INTERVENER UNDER THE PREVIOUS COLLECTIVE AGREEMENT BETWEEN THEM DATED MAY 1ST, 1965. THE APPLICANT SUBMITS THAT THE GRINDERS DO NOT FALL WITHIN THE PURVIEW OF THE COLLECTIVE AGREEMENT DATED SEPTEMBER 6TH, 1967, ENTERED INTO BY THE RESPONDENT AND THE INTERVENER. THE APPLICANT FURTHER SUBMITS THAT THE GRINDERS BY THEMSELVES ARE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

8. THE EVIDENCE OF THE RESPONDENT IS THAT WHEN IT INSTALLS TERRAZZO FLOORING IT USES A MIXED WORK FORCE OF MECHANICS AND LABOURERS INCLUDING GRINDERS. THE LABOURERS LAY THE UNDER-BEDDING INTO WHICH STEEL STRIPS ARE LAID BY THE MECHANICS OR LABOURERS UNDER THE SUPERVISION OF A MECHANIC. GENERALLY, LABOURERS, WITH EXPERIENCE, MIX THE TERRAZZO TOPPING, AGAIN UNDER THE SUPERVISION OF A MECHANIC. THE MECHANICS LAY THE TERRAZZO

TOPPING AND ROLL IT. THE TOPPING IS LEFT TO SOLIDIFY FOR FOUR OR FIVE DAYS. THE GRINDERS THEN PERFORM THEIR PARTICULAR SKILL, WHICH IS GRINDING DOWN THE TERRAZZO TOPPING TO AN EVEN SURFACE. THE MECHANICS THEREAFTER PLACE GROUTING IN ANY REMAINING DEPRESSIONS. A COUPLE OF DAYS LATER THE GRINDERS GO OVER THE TERRAZZO TOPPING WITH THEIR MACHINES TO FINISH THE SURFACE. THE GRINDERS ACQUIRE THEIR PARTICULAR SKILL BY EXPERIENCE ON THE JOB. WE WOULD MENTION HERE THAT THE RESPONDENT USES ONLY LABOURERS IN THE LAYING OF SIDEWALKS, CURBS AND GUTTERS.

9. BY PAST PRACTICE IN THE CONSTRUCTION INDUSTRY, ALL MARBLE, TILE AND TERRAZZO MECHANICS AND THEIR APPRENTICES FORM AN APPROPRIATE BARGAINING UNIT. THIS UNIT OF EMPLOYEES OF THE RESPONDENT IS ALREADY REPRESENTED BY THE APPLICANT. ALL MARBLE, TILE AND TERRAZZO HELPERS, BY PAST PRACTICE, ALSO CONSTITUTE AN APPROPRIATE BARGAINING UNIT. WITH REFERENCE TO THE WORK FORCE OF THE RESPONDENT THIS UNIT WOULD BE COMPOSED OF ALL LABOURERS WHO ASSIST THE MECHANICS AND APPRENTICES IN INSTALLING TERRAZZO FLOORING INCLUDING THE GRINDERS. EVEN ASSUMING, FOR PURPOSES OF ARGUMENT ONLY, THAT THE GRINDERS ARE NOT COVERED BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, THE BOARD FINDS THAT THE GRINDERS BY THEMSELVES DO NOT CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. IN THE PRESENT CASE, THE INAPPROPRIATENESS OF THE UNIT PROPOSED BY THE APPLICANT IS EMPHASIZED BY THE FACT THAT ACCORDING TO THE EVIDENCE OF THE RESPONDENT, WHICH WE ACCEPT, THE GRINDERS SPEND APPROXIMATELY SIXTY PER CENT OF THEIR TIME PERFORMING THEIR PARTICULAR SKILL, THE REMAINING FORTY PER CENT OF THEIR TIME BEING SPENT PERFORMING LABOURING FUNCTIONS WHICH CLEARLY FALL WITHIN THE SCOPE OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. IN ALL THE CIRCUMSTANCES, THE BOARD FINDS THAT THE ONLY BARGAINING UNIT WHICH WOULD BE APPROPRIATE TO BE REPRESENTED BY THE APPLICANT IS A UNIT COMPOSED OF ALL MARBLE, TILE AND TERRAZZO HELPERS.

10. SINCE THE BARGAINING UNIT SOUGHT BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING, IT IS NOT NECESSARY FOR THE BOARD, HAVING REGARD TO THE INSTANT APPLICATION, TO DEAL WITH THE REPRESENTATIONS OF THE PARTIES CONCERNING THE SCOPE OF THE SEPTEMBER 6TH, 1967 COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE APPROPRIATE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 2ND, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. THE APPLICATION, ACCORDINGLY, IS DISMISSED.



13689-67-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (APPLICANT) V. BEAVER FOUNDATION LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 5, 1967.

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3. THE RESPONDENT FAILED TO FILE A REPLY, A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

4. THE APPLICANT IN THIS CASE IS LOCAL UNION 124. THE EVIDENCE OF MEMBERSHIP FILED IN SUPPORT OF THE APPLICATION IS TWO COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE APPLICATIONS ARE FOR MEMBERSHIP IN THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA. THERE IS A PLACE ON THE APPLICATION FORMS WHERE THE APPLICANT CAN SPECIFY A LOCAL UNION NUMBER. THESE SPACES CONTAIN A SERIES OF NUMBERS BUT THERE IS NO REFERENCE TO LOCAL UNION 124. ALSO THE SERIES OF NUMBERS ARE NOT THE SAME IN BOTH APPLICATION FORMS. MOREOVER, THERE IS NO REFERENCE TO LOCAL 124 ON THE RECEIPTS ATTACHED TO THE APPLICATION FORMS. THE EVIDENCE OF MEMBERSHIP, THEREFORE, CANNOT BE CONSIDERED AS EVIDENCE OF MEMBERSHIP IN THE APPLICANT LOCAL UNION 124. EVEN IF THE COMBINATION APPLICATIONS AND RECEIPTS ARE CONSIDERED AS EVIDENCE OF MEMBERSHIP IN THE INTERNATIONAL ASSOCIATION, THIS STILL DOES NOT HELP THE APPLICANT AS THE BOARD HAS HELD THAT EVIDENCE OF MEMBERSHIP IN A PARENT UNION IS NOT PER SE EVIDENCE OF MEMBERSHIP IN A PARTICULAR LOCAL (SEE MILSON FLOORS LIMITED CASE O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966 P. 419).

5. ACCORDINGLY, ON THE BASIS OF THE EVIDENCE OF MEMBERSHIP FILED IN THE INSTANT CASE, THE BOARD IS UNABLE TO FIND THAT THERE IS DOCUMENTARY EVIDENCE BEFORE IT, THAT THE EMPLOYEES AFFECTED BY THE APPLICATION ARE MEMBERS OF LOCAL UNION 124 WITHIN THE MEANING OF SECTION 7 OF THE LABOUR RELATIONS ACT.

6. IN THESE CIRCUMSTANCES THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENTS - TERMINATION

13715-67-R: BLH-BERTRAM LTD. (APPLICANT) V. PATTERN MAKERS ASSOCIATION OF HAMILTON AND VICINITY (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. P. HUNT FOR THE APPLICANT,  
JAMES LESLIE AND MURRAY BLAND FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 24, 1967.

1. THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT, FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT.

2. IT APPEARS THAT THE APPLICANT CLOSED ITS FOUNDRY OPERATIONS, IN WHICH THE EMPLOYEES REPRESENTED BY THE RESPONDENT WERE EMPLOYED, ON FEBRUARY 17TH, 1967. THE APPLICANT ALSO STATED THAT IT HAS NO INTENTION OF REOPENING ITS FOUNDRY AND THAT AT THE PRESENT TIME NO EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT ARE EMPLOYED BY THE APPLICANT.

3. IT SEEMS TO THE BOARD THAT, IN GENERAL, THE LANGUAGE USED BY THE BOARD IN THE SOLE CASE (1949), D.L.S. 7-2105, IS APPLICABLE UNDER THE PRESENT LEGISLATION AND TO THE PRESENT SITUATION. THE LANGUAGE OF THAT CASE ADAPTED TO THE PRESENT LEGISLATION IS AS FOLLOWS:

"A [TERMINATION] PROCEEDING IS A TYPE OF REPRESENTATION PROCEEDING, THAT IS, IT HAS AS ITS OBJECTIVE THE DETERMINATION OF A QUESTION OF REPRESENTATION. AN APPLICATION FOR [A DECLARATION TERMINATING BARGAINING RIGHTS] IS, IN EFFECT, A REQUEST THAT THE BOARD EXAMINE INTO AND DETERMINE THE QUESTION WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THEIR ... BARGAINING AGENT. THE BASIS UPON WHICH [A DECLARATION TERMINATING BARGAINING RIGHTS] MAY BE GRANTED IS THAT 'A BARGAINING AGENT NO LONGER REPRESENTS...THE EMPLOYEES IN [THE BARGAINING UNIT]'. THAT CRITERION, WE SUGGEST, PRESUMES THE EXISTENCE OF THE UNIT, OR TO STATE IT IN ANOTHER WAY, PRESUMES THE PRESENCE IN THE UNIT OF EMPLOYEES WHO MAY SIGNIFY WHETHER OR NOT THEY WISH THE BARGAINING AGENT CONCERNED TO CONTINUE TO REPRESENT THEM. IN THE PRESENT INSTANCE THAT CONDITION DOES NOT OBTAIN."

4. HAVING REGARD TO THE CIRCUMSTANCES AND THE PRINCIPLES OUTLINED ABOVE, THIS APPLICATION IS THEREFORE DISMISSED.

5. IT IS TO BE NOTED THAT AT THE HEARING IN THIS MATTER, THE RESPONDENT ADVISED THE BOARD THAT IT DID NOT INTEND TO SEEK TO BARGAIN WITH THE APPLICANT FOR A NEW COLLECTIVE AGREEMENT UNTIL SUCH TIME AS THE APPLICANT EMPLOYED PERSONS FOR WHOM THE RESPONDENT WAS THE BARGAINING AGENT.

A SIMILAR ENDORSEMENT WAS ISSUED IN FILE NO. 13714-67-R,  
EXCEPT THAT PARAGRAPH 5 OF THIS ENDORSEMENT DID NOT APPEAR THEREIN.

13759-67-R: GEORGE MAHARAS (APPLICANT) V. HOTEL AND RESTAURANT  
EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 254  
(RESPONDENT).

RE: DIANA SWEETS LTD.,  
TORONTO, ONTARIO.

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES  
AND H. F. IRWIN.

DECISION OF THE BOARD: OCTOBER 20, 1967.

1. THE APPLICANT APPLIED ON OCTOBER 18TH, 1967, PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT, FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF DIANA SWEETS LTD. AT TORONTO REPRESENTED BY THE RESPONDENT.
2. IT WOULD APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND DIANA SWEETS LTD. ON AUGUST 16TH, 1967, AND THAT WHILE MEETINGS WERE CONVENED BY THE CONCILIATION OFFICER DURING THE MONTH OF SEPTEMBER, 1967, THE CONCILIATION OFFICER HAS NOT REPORTED AS OF THE DATE HEREOF.
3. SECTION 46(2) OF THE ACT PROVIDES THAT AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF A TRADE UNION CANNOT BE MADE WHERE A CONCILIATION OFFICER HAS BEEN APPOINTED BY THE MINISTER UNLESS FOLLOWING SUCH APPOINTMENT,
  - (A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR
  - (B) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
  - (C) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD,WHICH EVER IS LATER.
4. IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT NONE OF THE TIME PERIODS REFERRED TO IN THE PRECEDING PARAGRAPH COULD HAVE ELAPSED BETWEEN THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER AND THE DATE OF THE MAKING OF THIS APPLICATION.

5. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE, IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE ACT, THAT THIS APPLICATION IS UNTIMELY.
6. THE BOARD ACCORDINGLY DIRECTS THE APPLICANT TO ADVISE THE BOARD IN WRITING ON OR BEFORE OCTOBER 27TH, 1967 WHETHER IN HIS OPINION THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANT IS OF OPINION THAT THE BOARD IS IN ERROR HE WILL INCLUDE IN HIS ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF HIS OPINION.
7. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANT.
8. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANT.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

13053-67-U: THE GOODYEAR TIRE & RUBBER COMPANY OF CANADA, LIMITED  
(APPLICANT) V. MEMBERS OF LOCAL 232, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, EMPLOYED AT THE APPLICANT'S NEW TORONTO FACTORY LOCATED AT 3050 LAKESHORE BLVD. WEST, NEW TORONTO AND THE CENTRAL DISTRIBUTING WAREHOUSE LOCATED ON KIPLING AVENUE, SOUTH, TORONTO 18: K. McDONALD, B. GALLANT, W. FLINT, L. DONOHUE, R. LA LONDE, W. THIELE, R. LUTTRELL, E. LIVELY, C. BARTLETT, R. POPP, C. WILLIAMS, D. LA POINTE, C. NAYLOR, P. KARPUK, W. BOLTON, J. BLAGDON, M. DELANEY, J. LANNING, E. ILES, C. BAUER, P. BODNAR, G. QUICK, A. PORCHUN, D. CRAWFORD, F. DESJARDINS, H. GRAHAM, T. HOWARD, A. MCPHERSON, G. WISEMAN, L. GAUVIN, B. BOURQUE, J. PHILLIPS, J. SOLOMAN, A. MACEACHERN, D. HELMER, C. NAEF, D. PARSONS, D. HALL, J. LABLOND, T. CRAIG, G. ARMSTRONG, R. CHAMBERS, K. WHYTE, J. LAWRENCE, J. CORMIER, C. LACROIX, P. COLES, A. WINTERSINGER, K. HALLORAN, C. MARACLE, L. BROWN, S. BACKS, F. JAMES, O. FERGUSON, W. DUNSFORD, R. DOBBIN, R. NOWLAN, R. ROBINSON, W. CHASE, W. MCKINNON, R. CORRIGAN, H. MOULTON, J. MALISHCH, T. CHISHOLM, L. DOIRON, G. FABRI, A. MORRISON, K. MORGAN, P. HAFFENDEN, L. O'SHAUGHNESSY, G. MCCULLIGH, N. RICHARD, M. CURTIS, C. ADAMSON, C. SAYERS, M. DUVAL, V. LOUGHEED. (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS,  
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: ALLAN E. ROBINETTE, Q.C., B. HASLAM, W.C. ANDERSON AND DON WHIDDEN FOR THE APPLICANT, AND J. H. OSLER, Q.C., FOR THE RESPONDENTS.

DECISION OF THE BOARD:

OCTOBER 11, 1967.



1. THIS IS AN APPLICATION UNDER SECTION 67 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT A GROUP OF NAMED EMPLOYEES OF THE APPLICANT ENGAGED IN AN UNLAWFUL STRIKE ON APRIL 17TH AND 18TH, 1967, CONTRARY TO SECTION 54 OF THE ACT.

2. AT THE REQUEST OF THE APPLICANT, THE PROCEEDINGS WERE WITHDRAWN INsofar AS THEY CONCERNED L. DONOHUE, F. DESJARDINS, T. HOWARD, J. SOLOMAN, D. HELMER, D. HALL, C. LACROIX, S. BACKS, R. ROBINSON, R. CORRIGAN, H. MOULTON, T. CHISHOLM, G. FABRI AND N. RICHARD, ALL OF WHOM HAVE LEFT THE EMPLOYMENT OF THE APPLICANT. IN THIS CONNECTION WE MIGHT REFER TO FIBERGLASS CANADA LIMITED, SARNIA, CASE, (1952) C.L.S. 76-337, AND TO FALCONBRIDGE NICKEL MINES LIMITED CASE, C.L.C. 76-704, WHICH INDICATE THAT IN THE BOARD'S OPINION SECTION 67 (OR 59 AS IT THEN WAS) IS NOT A PUNITIVE REMEDY AND THEREFORE NOT ONE AS AGAINST ANY PARTICULAR INDIVIDUAL.

3. AT THE TIME THE EVENTS WHICH THE APPLICANT CLAIMS CONSTITUTE AN UNLAWFUL STRIKE TOOK PLACE, A COLLECTIVE AGREEMENT WAS IN OPERATION BETWEEN THE APPLICANT AND LOCAL 232, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, COVERING THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

4. THE BOARD FINDS THAT EMPLOYEES OF THE APPLICANT IN DEPARTMENT 1550, WHO WERE SCHEDULED TO WORK ON THE SECOND SHIFT, THOSE SCHEDULED TO WORK ON THE THIRD SHIFT ON APRIL 17TH, 1967, AND THOSE EMPLOYEES WHO WERE SCHEDULED TO WORK ON THE FIRST SHIFT ON APRIL 18TH, 1967, BEING RESPONDENTS NAMED IN THE APPLICATION AS AMENDED AT THE HEARING, CEASED AND REFUSED TO WORK IN COMBINATION, OR IN CONCERT, OR IN ACCORDANCE WITH A COMMON UNDERSTANDING ON THEIR RESPECTIVE SHIFTS, AND THEREBY ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION 1 (1) (i) OF THE LABOUR RELATIONS ACT.

5. UNDER THE PROVISIONS OF SECTION 67, THE BOARD HAS A DISCRETION AS TO WHETHER TO ISSUE OR TO DECLINE TO ISSUE A DECLARATION IN CASES WHERE AN UNLAWFUL STRIKE HAS OCCURRED. IN THE BALL BROTHERS LTD. CASE, (1957) C.L.S. 76-576, IT IS SET OUT THAT THE BOARD GENERALLY HOLDS THAT A DECLARATION SHOULD NOT ISSUE IN A CASE WHERE THE MATTER GIVING RISE TO THE APPLICATION HAS BEEN SETTLED BEFORE THE APPLICATION CAME ON FOR HEARING. THERE ARE, HOWEVER, AS INDICATED IN THE ABOVE CASE, SPECIAL CIRCUMSTANCES IN THE PRESENCE OF WHICH THE BOARD WILL ISSUE A DECLARATION, NOTWITHSTANDING THE FACT THAT THE STRIKE HAS BEEN SETTLED PRIOR TO THE HEARING. THOSE SPECIAL CIRCUMSTANCES ARE: (A) WHERE A UNION HAS CALLED A NUMBER OF UNLAWFUL STRIKES AS PART OF A GENERAL PATTERN FOR GAINING ITS OBJECTIONS IN DEFIANCE OF THE LAW AND (B) WHERE THE EMPLOYER AFFECTED HAS A REASONABLE FEAR THAT HIS OPERATION WILL AGAIN BE INTERRUPTED IN A SIMILAR WAY.

6. THE EVIDENCE DISCLOSES THAT IN JUNE OF 1964 THERE WAS A WORK STOPPAGE IN DEPARTMENT 1550 BECAUSE OF HEAT. IN OCTOBER OF THAT YEAR THERE WAS A STOPPAGE OF ABOUT ONE HOUR ARISING OUT OF A CHANGE IN THE PIECEWORK RATES. ON JUNE 24TH, 1965, THIS BOARD ISSUED A DECLARATION THAT EMPLOYEES IN THE NEW TORONTO FACTORY AND THE WAREHOUSE IN ETOBICOKE ENGAGED IN AN UNLAWFUL STRIKE. IN 1966 THERE WERE TWO WORK STOPPAGES ATTRIBUTED TO HEAT. THESE OCCURRED ON THE 23RD AND 29TH OF JUNE. THE PRESENT INCIDENTS, AS ALREADY NOTED, OCCURRED ON APRIL 17TH AND 18TH, 1967.

7. HAVING REGARD TO THE FOREGOING AND TO ITS FINDING SET OUT IN PARAGRAPH 4 HEREOF, THE BOARD FINDS THAT THE STRIKE ENGAGED IN BY THE EMPLOYEES REFERRED TO IN THE SAID PARAGRAPH WAS CONTRARY TO SECTION 54(1) OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY DECLARES THAT THE SAID STRIKE WAS UNLAWFUL.

INDEXED ENDORSEMENTS - SECTION 65

12823-66-U: WALTER URBANOWICZ (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 120, W. A. NICHOLLS AND FRED TURNER (RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT HEARING: WALTER URBANOWICZ FOR THE COMPLAINANT,  
S. L. ROBINS, Q.C., AARON BROWN AND J. A. SHIRKIE FOR THE  
RESPONDENTS.

DECISION OF THE BOARD: OCTOBER 19, 1967.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGED THAT ON OR ABOUT JANUARY 21ST, 1967 THE BUSINESS MANAGER OF THE RESPONDENT UNION REFUSED TO ALLOW THE COMPLAINANT TO WRITE UNION ENTRANCE EXAMINATIONS. IN ADDITION, THE COMPLAINANT ALLEGED THAT THE RESPONDENT UNION HAD DISCRIMINATED AGAINST THE COMPLAINANT BY PREVENTING HIM FROM PERFORMING AVAILABLE WORK AND BY COLLECTING PAYMENTS FROM HIM FOR WELFARE BENEFITS WHICH WERE NOT PROVIDED.

2. THE COMPLAINANT IN HIS COMPLAINT REQUESTED THAT HE BE ALLOWED TO WRITE THE UNION ENTRANCE EXAMINATIONS AND THAT FUNDS COLLECTED BY THE UNION FOR WELFARE BENEFITS WHICH WERE NOT PROVIDED BE RETURNED TO HIM.

3. IN ITS INTERIM DECISION OF SEPTEMBER 5TH, 1967, THE BOARD DETERMINED THAT PURSUANT TO THE PROVISIONS OF SECTION 52 OF THE ACT THE BOARD HAD JURISDICTION TO ENTERTAIN THE COMPLAINT THAT THE RESPONDENTS HAD SOUGHT BY INTIMIDATION OR COERCION TO COMPEL THE COMPLAINANT TO REFRAIN FROM BECOMING A MEMBER OF THE TRADE UNION AND DIRECTED THAT THIS MATTER BE LISTED FOR HEARING TO HEAR THE EVIDENCE OF THE PARTIES WITH RESPECT TO ALL ISSUES IN THIS CASE.

4. THIS MATTER CAME ON FOR HEARING AT LONDON ON OCTOBER 16TH, 1967. THE COMPLAINANT APPEARED IN PERSON BUT WAS NOT REPRESENTED BY COUNSEL. AT THE HEARING THE COMPLAINANT ADVISED THE BOARD THAT HE WAS NOW ENGAGED AS AN INDEPENDENT ELECTRICAL CONTRACTOR AND THEREFORE WISHED TO ABANDON HIS REQUEST TO WRITE THE UNION MEMBERSHIP EXAMINATIONS AND STATED THAT HE DID NOT WISH TO BECOME A MEMBER OF THE RESPONDENT UNION.

5. WHEN THE COMPLAINANT WAS INVITED TO PRODUCE EVIDENCE IN SUPPORT OF HIS CLAIM FOR RELIEF HE MADE A SERIES OF UNSUPPORTED ALLEGATIONS. THE BOARD AT THAT POINT IN THE PROCEEDINGS DREW THE COMPLAINANT'S ATTENTION TO THE FACT THAT HIS UNSUPPORTED ALLEGATIONS FELL SHORT OF ESTABLISHING HIS ENTITLEMENT FOR THE RELIEF HE CLAIMED.

6. IN VIEW OF THE CONFUSION WHICH APPEARED TO EXIST IN THE MIND OF THE COMPLAINANT AND IN AN ATTEMPT TO ADJUDICATE THIS MATTER ON ITS MERITS, THE BOARD ADVISED THE COMPLAINANT THAT EVEN THOUGH HE HAD ABANDONED HIS REQUEST TO WRITE THE UNION ENTRANCE EXAMINATIONS HE MUST FIRST ESTABLISH THAT THE RESPONDENTS, BY INTIMIDATION AND COERCION, HAD PREVENTED HIM FROM BECOMING A MEMBER OF THE RESPONDENT UNION CONTRARY TO SECTION 52 OF THE ACT. THE BOARD FURTHER ADVISED HIM THAT IF HE WAS ABLE TO ESTABLISH THIS FACT, HE WOULD THEN HAVE TO PROVE THAT HE SUFFERED LOSS AS THE RESULT OF THE ACTIVITIES OF THE RESPONDENTS IN THAT HE WAS THEREBY PREVENTED FROM PERFORMING OVERTIME WORK WHICH HE WOULD HAVE BEEN ENTITLED TO PERFORM AS A UNION MEMBER AND HE WOULD FURTHER HAVE TO ESTABLISH THAT HE DID NOT RECEIVE WELFARE BENEFITS WHICH HE WOULD HAVE RECEIVED HAD HE BEEN A UNION MEMBER. THE BOARD RECESSED AT THIS JUNCTURE IN ORDER TO PROVIDE THE COMPLAINANT WITH AMPLE OPPORTUNITY TO ASSESS HIS POSITION AND ORGANIZE HIS CASE.

7. WHEN THE BOARD RECONVENED THE HEARING THE COMPLAINANT WAS GIVEN FULL OPPORTUNITY TO CALL ALL EVIDENCE THAT WAS AVAILABLE TO HIM. HOWEVER, RATHER THAN ESTABLISHING THE FACTS WHICH THE COMPLAINANT HAD ALLEGED, IT IS FAIR TO STATE THAT THE COMPLAINANT SUCCEEDED IN ESTABLISHING THAT HE HAD NO GROUNDS FOR COMPLAINT WITH RESPECT TO OVERTIME WORK. IN ADDITION, IT NOW APPEARS THAT ALL HIS CLAIMS FOR WELFARE BENEFITS TO WHICH HE WAS ENTITLED HAD BEEN PAID THROUGH THE WELFARE FUND.

8. IT SHOULD BE NOTED IN PARTICULAR THAT THE COMPLAINANT CALLED NO EVIDENCE CONCERNING HIS ALLEGATIONS THAT HE HAD BEEN COERCED AND INTIMIDATED BY THE RESPONDENTS AND THERE BY PREVENTED FROM WRITING THE UNION ENTRANCE EXAMINATIONS. NO EVIDENCE WAS CALLED BY THE COMPLAINANT CONCERNING HIS ALLEGATIONS THAT THE RESPONDENT UNION HAD ENGAGED IN THE PRACTICE OF ISSUING WORK PERMITS FOR THE PURPOSE OF PREVENTING EMPLOYEES FROM BECOMING MEMBERS OF THE UNION.

9. THE EVIDENCE ADDUCED BY THE COMPLAINANT WAS OF SUCH A NATURE THAT THE BOARD REQUESTED THE PARTIES TO PRESENT THEIR ARGUMENT BASED ON THE EVIDENCE ADDUCED BY THE COMPLAINANT. FOLLOWING THE COMPLAINANT'S ARGUMENT, THE BOARD ADVISED THE PARTIES THAT THE RESPONDENT NEED NOT ARGUE THE CASE.

10. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THE FACTS WHICH HE HAD ALLEGED AND ACCORDINGLY FINDS NO SUBSTANCE TO THE COMPLAINT.

11. THE COMPLAINT IS THEREFORE DISMISSED.

13305-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. G. W. MARTIN LUMBER LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 17, 1967.

1. BY ORDER DATED SEPTEMBER 14TH, 1967, THE BOARD DIRECTED THAT THE RESPONDENT FORTHWITH REINSTATE AND EMPLOY LYLE COUMBS TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE WAS RECEIVING AT THE TIME OF HIS DISCHARGE ON JUNE 23RD, 1967.

2. BY LETTER DATED SEPTEMBER 27TH, 1967, THE RESPONDENT ADVISED THE BOARD THAT IT HAD ATTEMPTED TO COMPLY WITH THE BOARD'S DIRECTION BY CONTACTING MR. COUMBS, HOWEVER, MR. COUMBS HAD STATED THAT HE WOULD NOT RETURN TO WORK FOR THE RESPONDENT.

3. THE SOLICITOR FOR THE COMPLAINANT ADVISED THE BOARD BY LETTER DATED OCTOBER 10TH, 1967, THAT LYLE COUMBS DOES NOT INTEND TO RETURN TO WORK AT G. W. MARTIN LUMBER LIMITED.

4. HAVING REGARD, THEREFORE, TO THE CIRCUMSTANCES SET OUT ABOVE, THE BOARD FINDS THAT THE RESPONDENT HAS COMPLIED WITH THE DIRECTION OF THE BOARD DATED SEPTEMBER 14TH, 1967 AND HAS SATISFIED ITS OBLIGATIONS THEREUNDER.

13400-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GENERAL FREEZER LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES  
AND J.E.C. ROBINSON.

APPEARANCES AT HEARING: LORNE INGLE, OTTO URBANOVICS FOR THE APPLICANT AND JOHN P. SANDERSON, GEORGE MOSKEY FOR THE RESPONDENT.



DECISION OF THE BOARD:

OCTOBER 24, 1967.

1. THIS IS A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.
2. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, JAMES L. LAUBER WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. MR. LAUBER WAS DISCHARGED BY THE RESPONDENT ON JULY 17TH, 1967. THE RESPONDENT DENIES THE COMPLAINT.
3. THE RESPONDENT IS A MANUFACTURER OF APPLIANCES AT WOODBRIDGE. THE AGGRIEVED PERSON WAS EMPLOYED AT THE RESPONDENT'S PLANT FOR ABOUT TWO AND A HALF YEARS PRIOR TO HIS DISCHARGE. HE WORKED FIRST AS A SHEET METAL WORKER, LATER AS A BUFFER AND FINALLY IN THE SHIPPING DEPARTMENT. HIS DIRECT SUPERVISOR IN THE SHIPPING DEPARTMENT UNTIL JANUARY, 1967, WAS MR. STEWART WHO IN TURN AFTER JUNE 1966, REPORTED TO MR. WIDDIFIELD, THE MANAGER OF CUSTOMER SERVICES. MR. WIDDIFIELD WAS RESPONSIBLE FOR THE SHIPPING DEPARTMENT. AFTER MR. STEWART RETIRED IN JANUARY, MR. LAUBER WAS ALONE IN THE DEPARTMENT UNTIL MAY WHEN MR. LOWE WAS EMPLOYED BY THE RESPONDENT AS TRAFFIC MANAGER AND SUPERVISOR. MR. LOWE WAS THEN MR. LAUBER'S DIRECT SUPERVISOR AND REPORTED TO MR. WIDDIFIELD.
4. IT WAS ALLEGED BY THE COMPLAINANT THAT MR. LAUBER WAS DISCHARGED BY MR. WIDDIFIELD AS A RESULT OF HIS MEMBERSHIP IN AND ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION. IT WAS THE CONTENTION OF THE RESPONDENT THAT THE AGGRIEVED PERSON WAS DISCHARGED FOR PROPER CAUSE IN THAT HE WAS INEFFICIENT IN HIS DUTIES. WHETHER OR NOT THE KNOWLEDGE OF MR. LAUBER'S UNION ACTIVITIES CAN BE IMPUTED TO THE RESPONDENT IS IN DOUBT.
5. MR. LAUBER TESTIFIED THAT HE WAS A MEMBER OF THE COMPLAINANT UNION, HAD TAKEN ACTIVE PART IN UNION ACTIVITIES AND HAD AN ORGANIZATIONAL PICNIC FOR EMPLOYEES OF THE RESPONDENT AT HIS HOME IN JUNE. MR. LAUBER TESTIFIED THAT IN SEVERAL CONVERSATIONS WITH MR. LOWE THE UNION WAS MENTIONED AND REFERENCES WERE MADE TO THE PICNIC HELD AT HIS HOME. IT WAS ALSO HIS EVIDENCE THAT THE SUBJECT OF THE UNION HAD BEEN DISCUSSED AT A MEETING HELD ON JUNE 28TH, IN MR. TOBIN'S OFFICE TO WHICH HE WAS DIRECTED TO ATTEND BY MR. LOWE, AND WHERE HE, MR. TOBIN AND MR. WIDDIFIELD WERE PRESENT. MR. TOBIN IS THE MANAGER OF MANUFACTURING FOR THE RESPONDENT. HE THUS ALLEGED THAT HIS ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION WERE KNOWN TO THE RESPONDENT AND THIS WAS THE TRUE REASON FOR HIS DISCHARGE. HE DENIED ANY INEFFICIENCY ON HIS PART IN THE PERFORMANCE OF HIS DUTIES.
6. MR. LOWE TESTIFIED THAT MR. LAUBER HAD BROUGHT UP THE SUBJECT OF THE UNION IN A CONVERSATION WITH HIM BUT HE HAD

SHRUGGED IT OFF AND HAD NOT MENTIONED ANYTHING ABOUT THE CONVERSATION WITH MR. LAUBER TO ANYONE ELSE IN MANAGEMENT. HE DENIED OTHER ALLEGED CONVERSATIONS WITH MR. LAUBER IN CONNECTION WITH UNION ACTIVITY. HE FURTHER DENIED INSTRUCTING MR. LAUBER TO ATTEND A MEETING ON JUNE 28TH, 1967. THE EVIDENCE OF BOTH MR. TOBIN AND MR. WIDDIFIELD WAS THAT MR. LAUBER DID NOT MEET WITH THEM ON JUNE 28TH OR AT ANY TIME AND NEITHER OF THEM WERE AWARE OF HIS UNION ACTIVITIES. MR. WIDDIFIELD TESTIFIED THAT THERE HAD BEEN MANY COMPLAINTS CONCERNING MR. LAUBER'S WORK IN THE SHIPPING DEPARTMENT AND MR. LAUBER HAD BEEN MADE AWARE OF THEM. AS A RESULT AFTER SEVERAL DISCUSSIONS WITH MR. LOWE CONCERNING MR. LAUBER'S PERFORMANCE OF HIS WORK, MR. WIDDIFIELD DISCHARGED HIM ON JULY 17TH BECAUSE OF HIS INEFFICIENCY. MR. WIDDIFIELD FURTHER STATED THAT HE HAD HEARD RUMOURS IN THE PLANT ABOUT UNION ACTIVITY BUT HAD NOT HAD ANY DISCUSSIONS WITH MR. LAUBER CONCERNING THE UNION NOR DID HE KNOW THAT MR. LAUBER WAS ACTIVE IN THE COMPLAINANT UNION. MR. TOBIN TESTIFIED THAT HE HAD HEARD RUMOURS OF UNION ACTIVITY BUT HAD DISCOUNTED THEM AS THE U.E.W. HAD BEEN PREVIOUSLY ORGANIZED IN THE PLANT AND HE HAD BEEN INSTRUCTED NOT TO HAVE DISCUSSIONS WITH ANYONE CONCERNING A UNION. HE DENIED ANY DISCUSSIONS WHATSOEVER WITH MR. LAUBER.

7. THERE IS A CONSIDERABLE CLASH OF TESTIMONY THROUGHOUT THE CASE. IN ASSESSING THE WEIGHT TO BE GIVEN TO THE EVIDENCE, HOWEVER, THE BOARD FEELS THAT MR. LAUBER SO EXAGGERATED HIS POSITION, HIS QUALIFICATIONS AND HIS RELATIONSHIP WITH MANAGEMENT PERSONNEL THAT HIS ENTIRE TESTIMONY WAS WEAKENED. ON THE OTHER HAND, THE WITNESSES FOR THE RESPONDENT APPEARED TO GIVE A STRAIGHT FORWARD AND PROBABLE ACCOUNT OF THE COURSE OF EVENTS LEADING UP TO AND SURROUNDING THE DISCHARGE OF MR. LAUBER. WE WERE MORE IMPRESSED WITH THEIR TESTIMONY THAN THAT OF MR. LAUBER.

8. IN THE FIRST INSTANCE, HOWEVER, AS COUNSEL FOR THE RESPONDENT ARGUED, THE PRIMARY ONUS IS ON THE COMPLAINANT TO SATISFY THE BOARD BY SUBSTANTIAL EVIDENCE THAT THE EMPLOYER ACTED CONTRARY TO THE LABOUR RELATIONS ACT. IN NATIONAL AUTOMATIC VENDING CASE, 67-935 THE BOARD SAID ON P. 67-937:

"THE BOARD MUST ALSO BE CIRCUMSPECT TO PREVENT AN INNOCENT EMPLOYER FROM BEING VICTIMIZED BY INVENTED OR IMAGINARY CLAIMS OF DISCRIMINATION LAUNCHED MERELY BECAUSE THE EMPLOYEE'S DISCHARGE IS COINCIDENTAL WITH THE UNION'S ORGANIZATIONAL CAMPAIGN. IN THIS RESPECT, THERE MUST, OF COURSE, BE EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCE OR DIRECT EVIDENCE THAT THE EMPLOYEE HAS BEEN DISCHARGED CONTRARY TO THE ACT."

9. HAVING REGARD TO ALL THE EVIDENCE PRESENTED AT THE HEARING IN THIS CASE, THE COMPLAINANT DID NOT ESTABLISH TO THE SATISFACTION

OF THE BOARD THAT THE AGGRIEVED PERSON WAS DISCHARGED CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT.

10. THE COMPLAINT IS THEREFORE DISMISSED.

13407-67-U: GEO. W. LESLIE (COMPLAINANT) V. ALLIED TOWERS'  
MERCHANTS LTD. TORONTO ONT. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 23, 1967.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. A FIELD OFFICER WAS APPOINTED TO INQUIRE INTO THE COMPLAINT AND HAS SUBMITTED HIS REPORT TO THE BOARD. IT IS CLEAR BOTH FROM THE COMPLAINT ITSELF AND FROM THE REPORT OF THE FIELD OFFICER THAT MR. LESLIE'S DISPUTE WITH THE RESPONDENT IS WITH RESPECT TO BACK WAGES AND VACATION PAY, FOLLOWING THE TERMINATION OF HIS SERVICES BY THE RESPONDENT. THE COMPLAINANT ALLEGES THAT HE WAS UNJUSTLY FIRED. THERE IS NO SUGGESTION, HOWEVER, THAT MR. LESLIE WAS FIRED BECAUSE OF ANY TRADE UNION ACTIVITY.

2. IN NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, THE BOARD SAID:

...IN OUR OPINION, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED, OR OTHERWISE DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT.

MR. LESLIE ALLEGES THAT HE WAS FIRED IN VIOLATION OF SECTION 59A(1) OF THE ACT. SECTION 59A(1) PROVIDES AS FOLLOWS:

NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL,

- (A) REFUSE TO EMPLOY OR CONTINUE TO EMPLOY A PERSON;
- (B) THREATEN DISMISSAL OR OTHERWISE THREATEN A PERSON;
- (C) DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR A TERM OR CONDITION OF EMPLOYMENT; OR

- (D) INTIMIDATE OR COERCE OR IMPOSE A  
PECUNIARY OR OTHER PENALTY ON A  
PERSON,

BECAUSE OF A BELIEF THAT HE MAY TESTIFY IN A PROCEEDING  
UNDER THIS ACT OR BECAUSE HE HAS MADE OR IS ABOUT TO  
MAKE A DISCLOSURE THAT MAY BE REQUIRED OF HIM IN A  
PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE AN  
APPLICATION OR FILED A COMPLAINT UNDER THIS ACT OR  
BECAUSE HE HAS PARTICIPATED OR IS ABOUT TO PARTICIPATE  
IN A PROCEEDING UNDER THIS ACT.

THERE IS NOTHING IN THE REPORT OF THE FIELD OFFICER OR IN THE COMPLAINT  
ITSELF WHICH SUGGESTS THAT MR. LESLIE WAS FIRED BECAUSE OF A BELIEF BY  
THE EMPLOYER THAT MR. LESLIE MIGHT TESTIFY IN A PROCEEDING UNDER THE  
ACT OR BECAUSE HE HAD MADE OR WAS ABOUT TO MAKE A DISCLOSURE IN A  
PROCEEDING UNDER THE ACT OR BECAUSE HE HAD MADE AN APPLICATION OR FILED  
A COMPLAINT UNDER THE ACT OR BECAUSE HE HAD PARTICIPATED OR WAS ABOUT  
TO PARTICIPATE IN A PROCEEDING UNDER THE ACT. FURTHERMORE, THERE IS  
NOTHING IN THE SAID REPORT OR IN THE COMPLAINT WHICH WOULD EVEN  
RE MOTELY SUGGEST THAT HE WAS DISCHARGED CONTRARY TO ANY OTHER PROVISION  
OF THE LABOUR RELATIONS ACT.

3. IN THESE CIRCUMSTANCES, IT IS CLEAR THAT THIS BOARD IS WITHOUT  
JURISDICTION TO DEAL WITH THIS COMPLAINT. IF MR. LESLIE HAS A REMEDY,  
AND OF COURSE WE MAKE NO FINDING IN THIS RESPECT, IT IS NOT UNDER THE  
LABOUR RELATIONS ACT.

4. THE COMPLAINT IS ACCORDINGLY DISMISSED.

13415-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V.  
HUMBER MEMORIAL HOSPITAL ASSOCIATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: J. H. OSLER, Q.C., AND A. RISELEY FOR THE  
COMPLAINANT, AND D. R. BYERS AND R. E. BUILDER FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
O. HODGES: OCTOBER 13, 1967.

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2. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE  
LABOUR RELATIONS ACT.

3. IT IS ALLEGED THAT WILLIAM MACKINNON, AN EMPLOYEE OF THE  
RESPONDENT, HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE  
PROVISIONS OF SECTION 50(A), 50(B), 50(C) AND SECTION 52 OF THE  
LABOUR RELATIONS ACT.



4. IT IS COMMON GROUND THAT ON OR ABOUT MAY 24TH, 1967, WILLIAM MACKINNON MET A FELLOW EMPLOYEE, NORMAN BRUTON, IN A HOSPITAL LOCKER ROOM USED BY THEM FOR CHANGING WHEN COMING OFF AND GOING ON SHIFT AND THAT AT THIS ENCOUNTER MACKINNON APPROACHED BRUTON WITH RESPECT TO JOINING THE UNION, THAT IS THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND, AFTER A BRIEF CONVERSATION ON THE SUBJECT, GAVE HIM A UNION CARD. MACKINNON TOLD BRUTON THAT IF HE WANTED TO JOIN THE UNION HE COULD FILL IN THE CARD AND SENT IT IN TOGETHER WITH ONE DOLLAR. BRUTON LATER REPORTED THE MATTER TO MR. BUILDER, THE ASSISTANT ADMINISTRATOR.

5. ON MAY 26TH MACKINNON WAS CALLED TO A MEETING WITH BUILDER, GODFREY, THE PERSONNEL MANAGER, AND MISS BRACKEN, ASSISTANT DIRECTOR OF NURSES. BUILDER TOLD MACKINNON THAT HE HAD BEEN TOLD BY "A PERSON OF GOOD CHARACTER" THAT MACKINNON HAD APPROACHED HIM ON HOSPITAL TIME AND HAD ATTEMPTED TO PERSUADE HIM TO BECOME A MEMBER OF THE UNION. MACKINNON WAS TOLD THAT THE HOSPITAL DID NOT PERMIT SOLICITATION DURING WORKING HOURS. HE WAS SHOWN A COPY OF THE LABOUR RELATIONS ACT AND HIS ATTENTION WAS DIRECTED TO SECTION 53. HIS EVIDENCE IS THAT HE WAS TOLD BY BUILDER THAT HE WAS IN VIOLATION OF THAT SECTION. BUILDER'S VERSION OF THIS PORTION OF THE INTERVIEW IS SIMILAR TO THAT OF MACKINNON. BUILDER STATED THAT HE "CITED" SECTION 53 TO MACKINNON. FOLLOWING THE INTERVIEW MACKINNON WAS SUSPENDED FOR ONE SHIFT.

6. IT IS QUITE CLEAR FROM WHAT WAS SAID TO MACKINNON AT THE MEETING REFERRED TO ABOVE, AS CONFIRMED BY THE EVIDENCE GIVEN AT THE HEARING BEFORE THE BOARD, THAT MACKINNON WAS SUSPENDED FOR "SOLICITATION" DURING WORKING HOURS AND, TO QUOTE MR. BUILDER, "BECAUSE OF SECTION 53". THAT SECTION IS AS FOLLOWS:-

NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION.

7. BUILDER'S EVIDENCE IS THAT ALTHOUGH THE HOSPITAL HAS A POLICY AGAINST SOLICITATION OF ANY KIND, NO RULE HAS EVER BEEN POSTED WITH RESPECT TO THIS AND, TO THE BEST OF HIS KNOWLEDGE, NO NOTICE OF ANY SUCH RULE OR POLICY HAS BEEN COMMUNICATED TO THE EMPLOYEES IN ANY WAY. IT IS QUITE OBVIOUS THEREFORE THAT, IN FACT, NO REAL PROHIBITION EXISTED WITH RESPECT TO SUCH CONDUCT.

8. WE ARE OF THE OPINION THAT BUILDER WAS OF THE GENUINE BUT NONETHELESS MISTAKEN BELIEF THAT SECTION 53 CREATES AN OFFENCE. THE SECTION DOES NOT PROHIBIT ANYONE FROM ATTEMPTING TO PERSUADE EMPLOYEES AT THEIR PLACE OF WORK DURING WORKING HOURS TO BECOME OR CONTINUE TO BE MEMBERS OF A UNION. AS THE BOARD STATED, IN DELTA STEEL FABRICATING CO. LTD. CASE, BOARD FILE NO. 0094-03-U, "ITS PURPOSE IS TO AFFORD AN EMPLOYER IN CERTAIN CIRCUMSTANCES AN ANSWER TO THE CHARGE THAT, BY TAKING DISCIPLINARY

ACTION AGAINST A PERSON WHO HAS ENGAGED IN THE CONDUCT SPELLED OUT IN THE SECTION, HE HAS, IPSO FACTO, CONTRAVENED THE UNFAIR PRACTICE SECTIONS OF THE ACT, PARTICULARLY SECTIONS 48 AND 50."

9. THERE IS A CONFLICT IN EVIDENCE AS TO THE TIME WHEN THIS MEETING TOOK PLACE. MACKINNON TESTIFIED THAT IT OCCURRED ABOUT 11:30 P.M. WHEN HE WAS COMING ON SHIFT AND BRUTON WAS CHANGING INTO STREET CLOTHES AT THE END OF HIS SHIFT. BRUTON, ON THE OTHER HAND, SAYS THE ENCOUNTER TOOK PLACE JUST BEFORE 3:30 P.M. WHILE HE WAS PREPARING TO GO ON DUTY. INCIDENTALLY, THE SHIFTS IN THE HOSPITAL ARE: 7:30 A.M. TO 4:00 P.M.; 3:30 P.M. TO 12 MIDNIGHT; 11:30 P.M. TO 8:00 A.M.

10. IN OUR OPINION, THE EVIDENCE OF BRUTON WITH RESPECT TO THE TIME THE MEETING OCCURRED IS TO BE PREFERRED. THAT BEING SO, MACKINNON OBVIOUSLY WAS NOT ATTEMPTING TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME A MEMBER OF A TRADE UNION, SO THAT EVEN IF THE RESPONDENT'S INTERPRETATION OF SECTION 53 WERE CORRECT IT WOULD STILL HAVE NO APPLICATION TO THE FACTS AS DESCRIBED BY THE RESPONDENT'S WITNESS. INDEED, EVEN IF WE WERE TO ACCEPT MACKINNON'S EVIDENCE AS TO THE TIME THE ENCOUNTER TOOK PLACE, THE SAME CONCLUSION MUST FOLLOW.

11. SECTION 3 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:-

EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES.

12. IT HARDLY SEEMS NECESSARY TO POINT OUT THAT THE SOLICITATION OF MEMBERSHIP IN A TRADE UNION IS ONE OF ITS LAWFUL ACTIVITIES AND THE PARTICIPATION OF AN EMPLOYEE IN SUCH ACTIVITY IS CLEARLY ONE OF THE RIGHTS UNDER THIS ACT DEALT WITH IN SECTION 50. THE FACT THAT THE RESPONDENT POINTED OUT TO THE AGGRIEVED THAT HE WAS IN VIOLATION OF SECTION 53, INESCAPABLY INDICATES THAT THE ACTION TAKEN AGAINST HIM AROSE BECAUSE OF HIS ACTIVITY ON BEHALF OF THE UNION. THAT THE RESPONDENT WAS MISTAKEN AS TO THE PURPORT OF SECTION 53 DOES NOT ALTER THE FACT THAT THE PENALTY IMPOSED WAS CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.

13. THE BOARD IS SATISFIED THAT THE SUSPENSION FROM EMPLOYMENT OF THE AGGRIEVED WAS CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.

14. THE BOARD DETERMINES THAT WILLIAM MACKINNON BE FORTHWITH FULLY COMPENSATED FOR ALL MONIES LOST DUE TO HIS SUSPENSION FROM WORK ON THE 26TH DAY OF MAY, 1967.

DECISION OF BOARD MEMBER H. F. IRWIN:

OCTOBER 13, 1967.

1. I DISSENT.

2. ON THE EVIDENCE ADDUCED AT THE HEARING IN THIS MATTER BEFORE THE BOARD, WILLIAM MACKINNON, AN ORDERLY IN THE HOSPITAL, WAS SUSPENDED FROM WORK FOR ONE DAY FOR ATTEMPTING TO PERSUADE NORMAN BRUTON, ANOTHER EMPLOYEE, TO JOIN THE COMPLAINANT TRADE UNION ON THE PREMISES OF THE EMPLOYER.

3. RICHARD BUILDER, THE ASSISTANT HOSPITAL ADMINISTRATOR, TESTIFIED UNDER OATH THAT THERE WAS A LONG STANDING RULE THAT SUCH ACTIVITY IS NOT ALLOWED ON THE PREMISES OF THE HOSPITAL AT ANY TIME. HOWEVER, THERE APPEARS TO HAVE BEEN NO ATTEMPT BY THE ADMINISTRATORS OF THE HOSPITAL TO PLACE THE RULE IN WRITING OR TO OTHERWISE MAKE IT KNOWN TO THE EMPLOYEES.

4. IF THIS WAS AN ARBITRATION ALLEGING UNJUSTIFIED SUSPENSION, I WOULD HAVE NO HESITATION UNDER SUCH CIRCUMSTANCES IN UPHOLDING THE GRIEVANCE AND AWARDING MACKINNON ONE DAY'S PAY FOR TIME LOST FROM WORK BECAUSE OF THE SUSPENSION. BUT THIS IS NOT AN ARBITRATION. THIS BOARD IS ONLY CONCERNED AS TO WHETHER MACKINNON WAS DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT.

5. MACKINNON TESTIFIED UNDER OATH THAT THE CONVERSATION COMPLAINED OF TOOK PLACE ABOUT 11:30 P.M. WHEN HE WAS PREPARING TO GO ON SHIFT, WHICH COMMENCED AT THAT HOUR. BRUTON'S SHIFT ENDED AT MIDNIGHT. BRUTON TESTIFIED THE CONVERSATION TOOK PLACE BEFORE 3:30 P.M. WHEN HE WAS PREPARING TO GO ON DUTY.

6. GIVING THE AGGRIEVED EMPLOYEE THE BENEFIT OF THE CONFLICT IN THE EVIDENCE AS TO THE TIME THE CONVERSATION TOOK PLACE, I WOULD FIND THAT THE CONVERSATION DID TAKE PLACE AT ABOUT 11:30 P.M. DURING BRUTON'S WORKING HOURS AND UNDER THE PROVISIONS OF SECTION 53 OF THE ACT THE BOARD HAS NO JURISDICTION TO DEAL WITH THE MATTER AND I WOULD HAVE DISMISSED THE COMPLAINT.

13437-67-U: EDWARD A. WILSON (COMPLAINANT) V. LOCAL-OFFICERS OF 582 AND WALTER KENSIT (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 25, 1967.

1. THIS COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IS ONE OF THREE FILED BY THE COMPLAINANT. "LOCAL-OFFICERS OF 582", ONE OF THE RESPONDENTS, IS INTENDED TO REFER TO RETAIL, WHOLE-SALE AND DEPARTMENT STORE UNION, LOCAL 582, HEREINAFTER REFERRED TO AS "LOCAL 582". THE OTHER TWO COMPLAINTS WERE CONSOLIDATED AND NAME DOMINION STORES LTD., STORE SUPERVISOR MR. JOE TRECO AND DISTRICT MANAGER MR. J. A. MALCOLM AS RESPONDENTS. IN ACCORDANCE WITH THE BOARD'S REGULAR PRACTICE, A FIELD OFFICER WAS APPOINTED TO INQUIRE INTO THE COMPLAINTS. HE HAS NOW SUBMITTED HIS REPORT TO THE BOARD.

IT IS CONVENIENT TO DEAL WITH THE TWO COMPLAINTS IN THE ONE DECISION.

2. THE COMPLAINTS ALLEGE THAT THE COMPLAINANT HAS BEEN DEALT WITH BY THE VARIOUS RESPONDENTS CONTRARY TO THE PROVISIONS OF SUBSECTION 4 OF SECTION 65 OF THE LABOUR RELATIONS ACT. IN THE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, THE BOARD SAID:

...IN OUR OPINION, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED, OR OTHERWISE DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT.

IN THESE CIRCUMSTANCES, THE FIELD OFFICER WAS INSTRUCTED TO ASCERTAIN FROM THE COMPLAINANT THE SECTION OR SECTIONS OF THE LABOUR RELATIONS ACT, OTHER THAN SECTION 65, ALLEGED TO HAVE BEEN VIOLATED BY THE RESPONDENTS IN THEIR VARIOUS DEALINGS WITH HIM.

3. WHEN THE BOARD TURNED TO CONSIDER THE REPORT OF THE FIELD OFFICER, IT CAME TO THEIR ATTENTION THAT THE COMPLAINTS HAD NOT BEEN AMENDED SO AS TO INDICATE WHICH SECTION OR SECTIONS OF THE ACT THE COMPLAINANT WAS RELYING ON AND, ACCORDINGLY, THE FIELD OFFICER WAS INSTRUCTED TO OBTAIN THIS INFORMATION FROM THE COMPLAINANT'S SOLICITOR. BY LETTER DATED OCTOBER 6TH, 1967, THE FIELD OFFICER WROTE TO THE COMPLAINANT'S SOLICITOR, REQUESTING A REPLY BY OCTOBER 13TH. WHEN NO REPLY WAS FORTHCOMING, THE FIELD OFFICER AND THE REGISTRAR OF THE BOARD MADE SEVERAL TELEPHONE CALLS TO THE SOLICITOR, WHO PROMISED TO HAVE THE INFORMATION IN BY THE 16TH OR 17TH OF OCTOBER. WHEN THE INFORMATION DID NOT ARRIVE, THE BOARD DECIDED TO DISPOSE OF THE COMPLAINT ON THE BASIS OF THE MATERIAL THEN BEFORE IT. UPON EXAMINING THE STATEMENT MADE BY THE COMPLAINANT TO THE FIELD OFFICER, THE BOARD DISCOVERED THAT THE COMPLAINANT ALLEGED THAT THE COMPANY WAS IN BREACH OF SECTION 50A OF THE LABOUR RELATIONS ACT AND THAT THE UNION (LOCAL 582) WAS IN BREACH OF SECTION 52 OF THE ACT "IN THAT THEY REFUSED ME THE RIGHT TO UNION GRIEVANCE PROCEDURE IN ACCORDANCE WITH THE TERMS OF THE COLLECTIVE AGREEMENT". THE BOARD ACCORDINGLY PROPOSES TO DEAL WITH THE COMPLAINT ON THE BASIS OF THESE ALLEGATIONS.

4. WHERE A FIELD OFFICER HAS BEEN UNABLE TO EFFECT A SETTLEMENT, THE BOARD IS THEN CALLED UPON TO CONSIDER HIS REPORT IN ORDER TO DETERMINE WHETHER OR NOT THE BOARD SHOULD INQUIRE FURTHER INTO THE COMPLAINT. IN THE PRESENT CASES THE COMPLAINANT ALLEGES THAT HE WAS DISCHARGED BY THE RESPONDENT TRECO DUE TO A MISUNDERSTANDING OVER A TELEPHONE CONVERSATION. THERE IS A COLLECTIVE AGREEMENT BETWEEN



LOCAL 582 AND THE RESPONDENT COMPANY, AND THE COMPLAINANT, A MEMBER OF THE UNION, REPORTED HIS DISCHARGE TO THE LOCAL PRESIDENT. SUBSEQUENTLY, THE COMPLAINANT ALLEGES, THE RESPONDENT KENSIT, AN INTERNATIONAL REPRESENTATIVE OF LOCAL 582'S PARENT ORGANIZATION, AND THE GRIEVANCE COMMITTEE OF LOCAL 582 MET WITH COMPANY PERSONNEL AND, FOLLOWING THESE DISCUSSIONS, REFUSED TO PROCESS FURTHER THE GRIEVANCE OF THE COMPLAINANT. SUBSEQUENTLY, AT A MEETING OF LOCAL 582, THE COMPLAINANT'S DISCHARGE WAS BROUGHT UP AND IT IS ALLEGED THAT, AT THAT TIME, THE RESPONDENT KENSIT MADE DISPARAGING REMARKS ABOUT THE COMPLAINANT DURING THE DISCUSSION OF THE ACTION TAKEN BY THE GRIEVANCE COMMITTEE. IT THUS BECOMES APPARENT THAT THE COMPLAINANT'S CASE FALLS UNDER TWO HEADS:

- (1) AS AGAINST THE COMPANY, TRECO AND MALCOLM THAT HE WAS IMPROPERLY DISCHARGED;
- (2) AS AGAINST LOCAL 582 AND WALTER KENSIT THAT THEY REFUSED HIM THE RIGHT TO USE THE GRIEVANCE PROCEDURE IN ACCORDANCE WITH THE TERMS OF THE COLLECTIVE AGREEMENT.

5. SECTION 50 OF THE LABOUR RELATIONS ACT PROVIDES IN PART AS FOLLOWS:

NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYER'S ORGANIZATION,

- (A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;

THERE IS NO SUGGESTION IN ANY OF THE MATERIAL BEFORE THE BOARD, WHETHER ONE LOOKS AT THE COMPLAINT OR AT THE STATEMENTS OBTAINED BY THE FIELD OFFICER FROM THE COMPLAINANT AND HIS WITNESSES, THAT THE COMPLAINANT WAS DISCHARGED BECAUSE HE WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THE ACT. WHATEVER MAY HAVE BEEN THE REASON FOR HIS DISCHARGE, AND WHETHER THE DISCHARGE WAS OR WAS NOT JUSTIFIED, IT IS NOT ALLEGED THAT THE DISCHARGE WAS BECAUSE OF HIS ACTIVITIES IN OR ON BEHALF OF THE TRADE UNION OR BECAUSE HE WAS EXERCISING ANY RIGHT CONFERRED ON HIM BY THE ACT. FURTHERMORE, THERE IS NOTHING IN THE COMPLAINT OR IN THE STATEMENTS OBTAINED BY THE FIELD OFFICE WHICH WOULD SUGGEST THAT THE COMPLAINANT WAS DISCHARGED CONTRARY TO ANY OTHER PROVISION OF THE LABOUR RELATIONS ACT. IN THESE CIRCUMSTANCES, THE COMPLAINTS DO NOT, IN THE OPINION OF THE BOARD, MAKE OUT A PRIMA FACIE CASE

FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, ARE ACCORDINGLY DISMISSED AGAINST THE RESPONDENTS DOMINION STORES LTD., MR. JOE TRECO AND MR. J. A. MALCOLM.

6. TURNING NOW TO DEAL WITH THE COMPLAINTS AGAINST LOCAL 582 AND WALTER KENSIT, SECTION 52 OF THE LABOUR RELATIONS ACT PROVIDES:

NO PERSON, TRADE UNION OR EMPLOYERS' ORGANIZATION SHALL SEEK BY INTIMIDATION OR COERCION TO COMPEL ANY PERSON TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION OR OF AN EMPLOYERS' ORGANIZATION OR TO REFRAIN FROM EXERCISING ANY OTHER RIGHTS UNDER THIS ACT OR FROM PERFORMING ANY OBLIGATION UNDER THIS ACT.

THERE IS NOTHING IN THE MATERIAL BEFORE US TO SUGGEST THAT THESE RESPONDENTS SOUGHT BY INTIMIDATION OR COERCION TO COMPEL THE COMPLAINANT TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION, NOR IS THERE ANY SUGGESTION THAT THE RESPONDENTS SOUGHT BY INTIMIDATION OR COERCION TO COMPEL THE COMPLAINANT TO REFRAIN FROM PERFORMING ANY OBLIGATIONS UNDER THE ACT OR TO REFRAIN FROM EXERCISING ANY OTHER RIGHTS UNDER THE ACT. THE COMPLAINANT DOES NOT HAVE A RIGHT UNDER THE ACT, PER SE, TO TAKE A GRIEVANCE THROUGH TO ARBITRATION. SEE SCARBORO BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 822. EVEN IF IT COULD BE SHOWN THAT LOCAL 582 AND WALTER KENSIT ACTED IN BAD FAITH OR THAT IN SOME WAY THERE WAS COLLUSION BETWEEN THESE RESPONDENTS AND THE RESPONDENT COMPANY AND ITS OFFICERS, THERE WOULD BE NO JURISDICTION IN THIS BOARD TO DEAL WITH THE MATTER BECAUSE, AS IS POINTED OUT IN THE SCARBORO BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 836,

...THE SUBSTANCE OF THE COMPLAINT IS AN ALLEGED WRONGFUL DISCHARGE NOT RELATED...TO ANY OF THE MATTERS WITH WHICH THE ACT DEALS.

THIS BOARD HAS NO JURISDICTION TO DEAL WITH CASES OF WRONGFUL DISCHARGE AS SUCH. RATHER, OUR JURISDICTION IN DISCHARGE CASES RELATES GENERALLY TO CASES OF DISCRIMINATION WITH RESPECT TO UNION MEMBERSHIP OR UNION ACTIVITY. AS WE FOUND ABOVE, THE COMPLAINTS IN THIS CASE ARE NOT CONCERNED WITH MATTERS OF THIS KIND. THE COMPLAINANT'S RELIEF, IF ANY, MUST BE SOUGHT IN A FORUM OTHER THAN THE LABOUR RELATIONS BOARD.

7. IN THE RESULT, THEREFORE, THE BOARD IS OF THE OPINION THAT THE COMPLAINT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINTS AGAINST LOCAL 582 AND WALTER KENSIT ARE ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - SECTION 47(A)

13661-67-M: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL-CIO-CLC, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. ESARES HOTEL ENTERPRISES LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS, P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: WM. KITCHING FOR THE APPLICANT, AND RALPH SNOW FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 23, 1967.

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2. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT. THE APPLICANT TRADE UNION WAS CERTIFIED BY THIS BOARD ON AUGUST 10TH, 1964, AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF SPRUCE VILLA HOTEL LIMITED AT WHITBY. THE COLLECTIVE AGREEMENT WAS MADE ON OCTOBER 28TH, 1964, BETWEEN THE APPLICANT AND SPRUCE VILLA HOTEL LIMITED, COVERING EMPLOYEES IN THE BARGAINING UNIT. THIS AGREEMENT WOULD BY ITS TERMS, HAVE EXPIRED ON OCTOBER 31ST, 1967, SUBJECT TO CERTAIN RENEWAL PROVISIONS.

3. ON APRIL 2ND, 1967, THE BUSINESS FORMERLY OPERATED BY SPRUCE VILLA HOTEL LIMITED AT WHITBY WAS SOLD TO ESARES HOTEL ENTERPRISES LIMITED, WHICH COMPANY NOW OPERATES THE SPRUCE VILLA HOTEL AT WHITBY. IT WAS NOT CONTESTED THAT THERE WAS A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT, AND THE BOARD SO FINDS.

4. IT IS CLEAR BY THE PROVISIONS OF SECTION 47A (2) OF THE LABOUR RELATIONS ACT THAT THE APPLICANT UNION IS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE SUCCESSOR EMPLOYER. SECTION 47A OF THE ACT DOES NOT OPERATE SO AS TO BIND THE SUCCESSOR EMPLOYER BY THE PROVISIONS OF A COLLECTIVE AGREEMENT MADE BY ITS PREDECESSOR, BUT RATHER IT OPERATES SO AS TO CONTINUE THE BARGAINING RIGHTS HELD BY THE TRADE UNION AND TO ENTITLE IT TO GIVE NOTICE TO BARGAIN TO THE SUCCESSOR EMPLOYER, WHICH WOULD HAVE THE SAME EFFECT AS A NOTICE UNDER SECTION 11 OF THE ACT.

5. IT IS CLEAR THAT, IN THE CIRCUMSTANCES OF THIS CASE, THE APPLICANT IS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE RESPONDENT PURSUANT TO SECTION 47A (2) OF THE ACT. THERE APPEARS TO BE NO PROVISION IN THE ACT CONFERRING ANY JURISDICTION UPON THIS BOARD TO MAKE A FORMAL DECLARATION TO THIS EFFECT. THE PROVISIONS OF THE STATUTE IN THIS REGARD SPEAK FOR THEMSELVES. HAVING REGARD TO THE FOREGOING, THESE PROCEEDINGS ARE HEREBY TERMINATED.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

13140-67-JD: FRANKI CANADA LIMITED (COMPLAINANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 183, TORONTO AND THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506, MICHAEL J. REILLY AND ED. LINESS (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND  
BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 4, 1967.

1. BY A DECISION OF THE BOARD DATED MAY 26TH, 1967 THE BOARD MADE THE FOLLOWING INTERIM ORDER WITH REGARD TO THE COMPLAINT MADE BY THE COMPLAINANT IN THIS MATTER:

THE COMPLAINANT SHALL ASSIGN THE INSTALLATION OF CAISSONS AND THE UNDERPINNING WORK BEING DONE IN CONNECTION WITH THE CONSTRUCTION OF A BUILDING ON A SITE AT 18 KING STREET EAST IN THE CITY OF TORONTO TO MEMBERS OF BOTH LOCAL 506 AND LOCAL 183 OF THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA IN THE SAME RATIO AS MEMBERS OF LOCAL 506 AND LOCAL 183 WERE PERFORMING THE SAID WORK AS OF MAY 12TH, 1967. THE WORK THAT WAS BEING PERFORMED AS OF THAT DATE RELATING TO THE INSTALLATION OF CAISSONS AND UNDERPINNING AT THE SAME SITE BY MEMBERS OF OTHER CONSTRUCTION TRADES SHALL CONTINUE TO BE PERFORMED BY MEMBERS OF THOSE TRADES.

2. PURSUANT TO SECTION 66(4) OF THE LABOUR RELATIONS ACT, THE BOARD ON MAY 26TH, 1967 FILED IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT A COPY OF THE ABOVE INTERIM ORDER.

3. BY LETTER DATED SEPTEMBER 29TH, 1967, THE COMPLAINANT REQUESTS LEAVE OF THE BOARD TO WITHDRAW ITS COMPLAINT. FOR THE BOARD TO GRANT THE COMPLAINANT'S REQUEST AT THIS STAGE IN THE PROCEEDINGS OBVIOUSLY WOULD PRECLUDE ANY DETERMINATION BY THE BOARD ON THE MERITS OF THE COMPLAINT. IN THESE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT ITS CONSENT TO THE COMPLAINANT'S REQUEST NECESSARILY MUST BE CONDITIONAL UPON A REVOCATION BY THE BOARD OF ITS INTERIM ORDER IN THIS MATTER.

4. THE BOARD HEREBY REVOKES ITS INTERIM ORDER DATED MAY 26TH, 1967.

5. THE COMPLAINT IS WITHDRAWN BY LEAVE OF THE BOARD.



13584(A)-67-JD: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION No. 865 (COMPLAINANT) V. PROVINCIAL PAPER, LIMITED, PORT ARTHUR DIVISION AND INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER MILL WORKERS, LOCAL UNION NO. 40 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: J. J. DOROTA, J. WEDGE AND L. T. EXELL FOR THE COMPLAINANT, R. T. CARTER AND G. R. SHAW FOR THE RESPONDENT COMPANY, E. J. RYAN AND C. CAPPELLO FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: OCTOBER 2, 1967.

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2. THE COMPLAINANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION PURSUANT TO SECTION 66 OF THE LABOUR RELATIONS ACT WITH RESPECT TO AN ASSIGNMENT OF WORK MADE BY THE RESPONDENT COMPANY TO THE RESPONDENT TRADE UNION.

3. THE COMPANY OPERATES A PULP AND PAPER MILL AT PORT ARTHUR, THE COMPLAINANT AND RESPONDENT TRADE UNION TOGETHER WITH THE UNITED PAPERMAKERS & PAPERWORKERS, LOCAL UNION No. 239 JOINTLY ARE PARTIES TO A CURRENT COLLECTIVE AGREEMENT WITH THE COMPANY. BY THAT AGREEMENT THE COMPANY RECOGNIZES THE THREE TRADE UNIONS CONCERNED AS THE EXCLUSIVE BARGAINING AGENTS FOR THE EMPLOYEES UNDER THEIR RESPECTIVE JURISDICTION AT THE COMPANY'S PORT ARTHUR DIVISION. THE JURISDICTION CLAUSE OF THE AGREEMENT PROVIDES, IN PART, THAT QUESTIONS OF JURISDICTION SHALL CONFORM TO THE REGULATIONS COVERING SUCH MATTERS AS FIXED BY THE AMERICAN FEDERATION OF LABOUR - CONGRESS OF INDUSTRIAL ORGANIZATIONS.

4. BOTH THE COMPLAINANT AND THE COMPANY ASSERT THAT THE BOARD HAS THE JURISDICTION TO ENTERTAIN AND TO MAKE A BINDING DETERMINATION OF THE INSTANT COMPLAINT. THE RESPONDENT TRADE UNION, HOWEVER, SUBMITS THAT, HAVING REGARD TO THE ABOVE REFERRED PROVISION OF THE JURISDICTION CLAUSE OF THE COLLECTIVE AGREEMENT, THE BOARD IS DEPRIVED OF THE JURISDICTION TO DEAL WITH THIS MATTER. THE RESPONDENT TRADE UNION, HOWEVER, CONCEDED THAT IT WAS NOT AWARE OF ANY TRIBUNAL ESTABLISHED BY THE AFL-CIO WHICH HAD THE AUTHORITY TO MAKE A DECISION REGARDING THE WORK ASSIGNMENT IN DISPUTE NOR WAS IT AWARE OF ANY ARRANGEMENTS WHEREBY THE AFL-CIO HAD BESTOWED UPON THE CANADIAN LABOUR CONGRESS THE JURISDICTION TO MAKE A BINDING DETERMINATION OF THE ISSUE PRESENTLY BEFORE THE BOARD. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT SUBSECTION (8) OF SECTION 66 OF THE ACT HAS NO APPLICATION AND THAT ACCORDINGLY, THE INSTANT COMPLAINT FALLS WITHIN THE PURVIEW OF SUBSECTION (1) OF SECTION 66.

5. THE ISSUE FOR DETERMINATION IN THE INSTANT COMPLAINT IS WHETHER THE OPERATION OF A VEHICLE KNOWN AS A "PETTIBONE" CARY-LIFT FALLS WITHIN THE JURISDICTION OF THE COMPLAINANT OR THE RESPONDENT TRADE UNION. THE COMPANY, UPON ACQUIRING THE CARY-LIFT IN NOVEMBER OF 1966, ASSIGNED ITS OPERATION TO MEMBERS OF THE RESPONDENT TRADE UNION. THE COMPLAINANT CHALLENGES THIS ASSIGNMENT SUBMITTING THAT THE OPERATION AND THE FUNCTIONS WHICH THE VEHICLE PERFORMS ARE SIMILAR TO DIESEL CRAWLER CRANES WHICH THE COMPANY HAS RECOGNIZED AS BEING WITHIN THE JURISDICTION OF THE COMPLAINANT UNION.

6. THE CARY-LIFT IS A SELF-PROPELLED FOUR-WHEEL RUBBER TIRE VEHICLE. MOUNTED ON THE VEHICLE IS AN ARM WITH A MAXIMUM REACH OF APPROXIMATELY SIXTEEN FEET. ATTACHED TO THE ARM IS A MULTI-FORKED CLAM. THE ARM AND CLAM ARE MANOEUVRED HYDRAULICALLY IN DIRECT RESPONSE TO THE CONTROLS OPERATED BY THE DRIVER. THIS VEHICLE, WHICH IS HIGHLY MOBILE, IS PRIMARILY USED BY THE COMPANY IN THE YARD OF ITS MILL TO UNLOAD PULPWOOD FROM RAILWAY CARS AND TRUCKS. THE CARY-LIFT THEN TRANSPORTS THE WOOD IT UNLOADS TO THE COMPANY'S MILL POND, OR DIRECTLY TO ITS MILL SLASHER OR TO STORAGE AREAS IN THE YARD.

7. BY WAY OF COMPARISON, THE TYPE OF DIESEL CRAWLER CRANES USED BY THE COMPANY RUNS ON TREADS AND IS MUCH LESS MOBILE THAN THE CARY-LIFT. MOUNTED ON THE CRAWLER IS A BOOM HOIST WITH A REACH, DEPENDING ON THE MODEL, OF BETWEEN FORTY AND FIFTY-FIVE FEET. A BUCKET IS ATTACHED TO CABLE PULLEYS WHICH IN TURN ARE CONNECTED WITH THE BOOM HOIST, THE LATTER BEING MANOEUVRED BY THE DRIVER OF THE CRANE. THE OPERATOR OF A DIESEL CRAWLER CRANE DOES NOT HAVE THE SAME DIRECT CONTROL OVER THE MOVEMENT OF THE BUCKET OR OTHER ATTACHMENTS AS DOES THE OPERATOR OF A CARY-LIFT OVER THE FORK CLAM ATTACHED TO THE ARM OF THAT VEHICLE.

8. ON THE BASIS OF THE EVIDENCE, IT IS FAIR TO STATE THAT GREATER EXPERIENCE, SKILL AND JUDGMENT IS REQUIRED TO OPERATE A DIESEL CRAWLER CRANE PROFICIENTLY THAN IS REQUIRED TO OPERATE A CARY-LIFT. A LICENCE, WE WOULD ADD, IS NECESSARY IN ORDER TO BE A CRANE OPERATOR. ON THE OTHER HAND, BECAUSE OF ITS GREATER SPEED, CONSIDERABLE DEXTERITY IS NEEDED BY AN OPERATOR TO COMPETENTLY USE A CARY-LIFT. NO LICENCE, HOWEVER, IS REQUIRED TO OPERATE A CARY-LIFT.

9. PRIOR TO ACQUIRING THE CARY-LIFT, THE COMPANY USED ITS TWO CRANES FOR SOME OF THE SAME FUNCTIONS NOW PERFORMED BY THE CARY-LIFT. IN PARTICULAR, THE CARY-LIFT UNLOADS PULPWOOD FROM RAIL CARS AND TRANSFERS IT TO THE MILL POND OR STORAGE AREAS. THE CRANES, HOWEVER, ARE STILL THE ONLY MACHINES EQUIPPED TO MOVE "STACKED" PILES OF STORAGE WOOD. "STACKED" PILES IS AN EXPRESSION USED TO REFER TO UNORGANIZED HEAPS OF PULPWOOD. MOREOVER, ONLY THE CRANES ARE EQUIPPED TO DO DREDGING WORK WHICH IS DONE ANNUALLY IN THE MILL POND. ON THE OTHER HAND, THE CARY-LIFT IS MORE EFFICIENT IN MOVING "RANKED" WOOD, THAT IS, PULPWOOD NEATLY PILED IN ROWS.

10. THE PULPWOOD WHICH COMES FROM THE COMPANY'S OWN TIMBER LIMITS, AND WHICH IS GENERALLY TRANSPORTED TO THE MILL YARD BY RAIL CARS OR TANDEM TRAILERS, ORDINARILY IS IN EIGHT FOOT LENGTHS. THIS LENGTH OF PULPWOOD CAN BE HANDLED EITHER BY THE CRANES OR THE CARY-LIFT. THE PULPWOOD WHICH IS PURCHASED FROM SETTLERS IN THE AREA, AND WHICH IS BROUGHT TO THE MILL IN THEIR OWN TRUCKS, GENERALLY IS CUT TO FOUR FOOT LENGTHS. THE CARY-LIFT, UNLIKE THE CRANES, IS PARTICULARLY ADEPT AT MOVING PULPWOOD CUT OF THE LATTER LENGTH. MOREOVER, BY USING THE CARY-LIFT TO REMOVE THE WOOD FROM THE SETTLERS' TRUCKS THERE IS LESS HAZARD OF DAMAGE BEING DONE TO THE TRUCKS THEMSELVES THAN IF A CRANE WAS USED. THIS IS BECAUSE OF THE DIRECT CONTROL BY THE OPERATOR OVER THE ARM AND FORK CLAM OF THE CARY-LIFT.

11. IN SHORT, A CARY-LIFT AND A DIESEL CRAWLER CRANE OPERATE ON DIFFERENT PRINCIPLES AND IN A DISSIMILAR FASHION. FURTHER, WHILE THEY CAN DO A NUMBER OF THE SAME JOBS, EACH VEHICLE IS ESSENTIALLY DESIGNED TO PERFORM FUNCTIONS THAT ARE COMPLEMENTARY RATHER THAN IDENTICAL.

12. WHEN THE COMPANY ORIGINALLY COMMENCED ITS PAPER MILL OPERATIONS AT PORT ARTHUR IN 1917, THE HANDLING OF THE PULPWOOD WAS DONE MANUALLY WITH THE AID OF PERMANENT AND PORTABLE CONVEYORS. ALL OF THIS WORK WAS DONE BY MEMBERS OF THE RESPONDENT UNION. SOME TIME IN THE 1920'S THE COMPANY ACQUIRED ITS FIRST "BROWNING" STEAM LOCOMOTIVE CRANE TO ASSIST IN THE UNLOADING AND PILING OF PULPWOOD. THIS TYPE OF CRANE WAS CONFINED TO TRACKS WHICH WERE LAID IN THE MILL YARD. THROUGHOUT THE NEXT THREE DECADES, DURING WHICH PERIOD OF TIME THE COMPANY UTILIZED THE BROWNING CRANES, THEY WERE OPERATED BY MEMBERS OF THE RESPONDENT UNION. IT WAS ONLY WHEN THE COMPANY PURCHASED TWO DIESEL CRAWLER CRANES IN THE MID-1950'S THAT THE COMPANY EMPLOYED HOISTING ENGINEERS WHO WERE MEMBERS OF THE COMPLAINANT UNION TO OPERATE THESE CRANES.

13. FROM 1917 TO THE PRESENT TIME, ALL WORK IN THE MILL YARD WHICH INCLUDES THE DRIVING OF TRUCKS AND TRACTORS (WITH THE EXCEPTION OF THE OPERATION OF THE DIESEL CRAWLER CRANES) HAS BEEN DONE BY MEMBERS OF THE RESPONDENT UNION. THIS TAKES IN THE MECHANICS WHO DO THE BASIC SERVICING OF BOTH THE CRANES AND THE CARY-LIFT. MOREOVER, WHEN THE CARY-LIFT IS NOT IN USE, THE OPERATORS WORK IN THE YARD ALONG WITH OTHER MEMBERS OF THE RESPONDENT UNION. WE WOULD ADD, HOWEVER, THAT TO THE PRESENT, THE RESPONDENT UNION HAS ALLOWED THE CRANE OPERATORS WHO ARE MEMBERS OF THE COMPLAINANT UNION TO WORK IN THE YARD WHEN THE CRANES ARE NOT IN OPERATION, WITHOUT BECOMING MEMBERS OF THE RESPONDENT UNION. THE RESPONDENT UNION, HOWEVER, ASSERTS JURISDICTION OVER THE WORK DONE IN THE YARD.

14. THIS BRINGS US TO A CONSIDERATION OF THE JURISDICTION OF THE COMPLAINANT AND RESPONDENT UNIONS AS SET OUT IN THEIR RESPECTIVE

CONSTITUTIONS. IN BOTH CASES, THE SCOPE OF THEIR JURISDICTION IS SUFFICIENTLY WIDE TO ENCOMPASS THE OPERATION OF THE CARY-LIFT. THE CONSTITUTION OF THE COMPLAINANT UNION ASSERTS JURISDICTION OVER THE OPERATION OF ALL HOISTING AND PORTABLE MACHINES USED FOR ALMOST EVERY CONCEIVABLE PURPOSE. THE RESPONDENT UNION, ON THE OTHER HAND, ASSERTS JURISDICTION OVER ALL WORKERS ENGAGED IN AND AROUND PULP MILLS OF ALL TYPES. WE HARDLY NEED SAY THAT IN THE CIRCUMSTANCES, THE JURISDICTIONAL CLAIMS MADE BY THE TWO UNIONS ARE OF LITTLE ASSISTANCE TO THE BOARD IN DETERMINING THE PRESENT ISSUE.

15. WHAT IS OF GREATER HELP TO THE BOARD, HOWEVER, IS THE PAST PRACTICE, WHILE ADMITTEDLY SHORT, REGARDING THE OPERATION OF CARY-LIFTS BY OTHER COMPANIES. THE RESPONDENT COMPANY IS A WHOLLY-OWNED SUBSIDIARY OF THE ABITIBI POWER AND PAPER COMPANY LIMITED. THE PARENT COMPANY ALSO WHOLLY OWNS OTHER COMPANIES CARRYING ON PULP AND SULPHITE OPERATIONS AT SAULT STE. MARIE, IROQUOIS FALLS, PINE FALLS AND STURGEON FALLS. AT ALL OF THESE LOCATIONS THE COMPANY CONCERNED HAS A CARY-LIFT OR SIMILAR VEHICLE PERFORMING MUCH THE SAME FUNCTIONS AS THE CARY-LIFT AT PORT ARTHUR. IN ALL INSTANCES, THE VEHICLES ARE OPERATED BY MEMBERS OF THE RESPONDENT UNION. WE NOTE, HOWEVER, THAT THE COMPLAINANT UNION DOES NOT HOLD BARGAINING RIGHTS FOR ANY EMPLOYEES AT THE ABOVE MENTIONED LOCATIONS. (THE COMPLAINANT UNION HOLDS BARGAINING RIGHTS NOT ONLY FOR THE COMPANY'S CRANE OPERATORS AT PORT ARTHUR BUT ALSO FOR STATIONARY ENGINEERS EMPLOYED IN THE COMPANY'S STEAM PLANT).

16. SOME EVIDENCE WAS ADDUCED CONCERNING THE OPERATION OF CARY-LIFTS USED BY THE GREAT LAKES PULP AND PAPER COMPANY LIMITED. THE EVIDENCE, HOWEVER, IS NOT CLEAR AS TO THE JURISDICTIONAL AGREEMENT WHICH WAS REACHED BETWEEN THE COMPLAINANT AND RESPONDENT UNIONS AND THE COMPANY. IT WOULD APPEAR, HOWEVER, THAT MEMBERS OF BOTH UNIONS DO OPERATE THE CARY-LIFTS. THERE IS ALSO EVIDENCE THAT CARY-LIFTS ARE BEING OPERATED IN A COUPLE OF NORTHERN AREAS BY MEMBERS OF THE INTERNATIONAL WOODWORKERS UNION OF AMERICA IN LOGGING OPERATIONS. THE LATTER EVIDENCE SUGGESTS THAT THE SPECIAL SKILLS OF HOISTING ENGINEERS ARE NOT REQUIRED TO OPERATE A CARY-LIFT.

17. ON THE BASIS OF THE EVIDENCE, THE TYPE OF VEHICLE AND THE MODE OF OPERATION OF THE CARY-LIFT SEEMS TO BE QUITE DIFFERENT FROM A DIESEL CRAWLER CRANE. ALSO, THE SKILLS REQUIRED TO OPERATE A CARY-LIFT APPEAR TO BE LESS ONEROUS THAN THOSE REQUIRED TO OPERATE A DIESEL CRAWLER CRANE. FURTHER, THE EVIDENCE REVEALS THAT WITH THE EXCEPTION OF THE CRANES, ALL WORK PERFORMED IN THE MILL YARD OF THE COMPANY HAS ALWAYS BEEN DONE BY MEMBERS OF THE RESPONDENT UNION. MOREOVER, BY HAVING MEMBERS OF THE RESPONDENT UNION OPERATE THE CARY-LIFT, THESE EMPLOYEES OBVIOUSLY CAN MORE READILY BE INTEGRATED AND UTILIZED IN OTHER YARD WORK, WHEN THE CARY-LIFT IS NOT IN OPERATION, SINCE THE RESPONDENT UNION HAS GENERAL JURISDICTION OVER THE MILL YARD. FINALLY, THE EVIDENCE



REGARDING THE USE BY OTHER COMPANIES OF CARY-LIFTS OR SIMILAR MACHINES INDICATES THAT BY AND LARGE MEMBERS OF THE RESPONDENT UNION OR ANOTHER INDUSTRIAL UNION HAVE BEEN OPERATING THESE VEHICLES.

18. IN SUMMARY, THE COMPLAINANT HAS FAILED TO SATISFY THE BOARD THAT IT SHOULD MAKE A DIRECTION ALTERING THE ASSIGNMENT ALREADY MADE BY THE RESPONDENT COMPANY. .

19. THE BOARD ACCORDINGLY DIRECTS THAT THE RESPONDENT COMPANY, PROVINCIAL PAPER, LIMITED, PORT ARTHUR DIVISION, CONTINUE TO ASSIGN THE OPERATION OF ITS "PETTIBONE" CARY-LIFT AT ITS MILL AT PORT ARTHUR TO EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE & PAPER MILL WORKERS, LOCAL UNION No. 40.

INDEXED ENDORSEMENTS - REQUEST FOR REVIEW

12823-66-U: WALTER URBANOWICZ (COMPLAINANT) v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 120, W. A. NICHOLLS AND FRED TURNER (RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
F.W. MURRAY AND P.J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 24, 1967.

1. THE COMPLAINANT, BY HIS LETTER DATED OCTOBER 21ST, 1967 OBJECTED TO THE BOARD'S DECISION DATED OCTOBER 19TH, 1967 IN THIS MATTER ON THE GROUNDS THAT WHILE HIS EVIDENCE WAS GIVEN UNDER OATH, THE BOARD DID NOT REQUIRE THE RESPONDENTS' WITNESSES TO TESTIFY UNDER OATH.

2. THE BOARD FINDS NO SUBSTANCE TO THE COMPLAINANT'S ALLEGATIONS IN THAT NO EVIDENCE WAS ADDUCED BY THE RESPONDENTS' AND THEREFORE THERE WERE NO WITNESSES TO PLACE UNDER OATH. THE BOARD MADE ITS DETERMINATION OF THE COMPLAINANT'S CASE BASED SOLELY ON THE EVIDENCE ADDUCED BY THE COMPLAINANT. AS IS APPARENT FROM PARAGRAPH 9 OF THE BOARD'S DECISION OF OCTOBER 19TH, 1967, THE BOARD, AFTER THE CROSS-EXAMINATION OF THE COMPLAINANT BY THE RESPONDENTS, INVITED ARGUMENT BASED SOLELY UPON THE COMPLAINANT'S EVIDENCE. FOLLOWING THE COMPLAINANT'S ARGUMENT, THE BOARD INDICATED THAT IT WAS NOT NECESSARY FOR THE RESPONDENTS TO ARGUE THE CASE SINCE IT WAS READILY APPARENT THAT THERE WAS NO SUBSTANCE TO THE COMPLAINT ON THE EVIDENCE ADDUCED AND ARGUMENT MADE BY THE COMPLAINANT.

3. IF THE COMPLAINANT'S LETTER OF OCTOBER 21ST, 1967 IS TO BE CONSTRUED AS A REQUEST FOR REVIEW OF THE BOARD'S DECISION OF OCTOBER 19TH, 1967, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION AND THE REQUEST OF THE COMPLAINANT IS ACCORDINGLY DENIED.

12926-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. RUBBERMAID (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFFE AND J. E. C. ROBINSON.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFFE.                      OCTOBER 5, 1967.

1.            THE RESPONDENT BY ITS LETTER OF AUGUST 22ND, 1967, AND THE OBJECTORS BY THEIR LETTER OF AUGUST 30TH, 1967, HAVE REQUESTED THE BOARD TO REVIEW ITS DECISION DATED JULY 27TH, 1967, IN THIS MATTER.

2.            THE RESPONDENT IN ITS LETTER HAS BASED ITS REQUEST ON TWO GROUNDS AND HAS REQUESTED THE BOARD TO LIST THIS MATTER FOR HEARING TO PERMIT THE RESPONDENT TO MAKE REPRESENTATIONS TO THE BOARD IN SUPPORT OF ITS REQUEST. THE OBJECTORS HAVE RELIED ON THE ARGUMENTS AND SUBMISSIONS RAISED BY THE RESPONDENT IN ITS LETTER ABOVE REFERRED TO AND HAVE REQUESTED THE OPPORTUNITY TO MAKE SUBMISSIONS AND TO CALL EVIDENCE IN SUPPORT OF THEIR POSITION.

3.            DEALING WITH THE REQUESTS OF THE RESPONDENT AND THE OBJECTORS CONCERNING THEIR ALLEGATION THAT THERE WAS INSUFFICIENT EVIDENCE TO SUBSTANTIATE THE CONCLUSIONS ARRIVED AT BY THE MAJORITY OF THE BOARD, WHICH ALLEGATION THE RESPONDENT HAS PARTICULARIZED IN ITS REQUEST FOR RECONSIDERATION, WE FIND THAT THE EVIDENCE ADDUCED IN THIS MATTER SUBSTANTIATES THE FINDINGS OF FACT SET OUT IN THE BOARD'S DECISION OF JULY 27TH AND SUPPORTS THE CONCLUSIONS ARRIVED AT BY THE MAJORITY OF THE BOARD.

4.            THE OTHER GROUND OF OBJECTION SET OUT IN THE RESPONDENT'S LETTER READS AS FOLLOWS:

- (1) THE DECLARATION CONTAINED IN PARAGRAPH 17 OF THE DECISION OF THE MAJORITY OF THE BOARD IN WHICH THE BOARD INDICATED THAT "... THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT." AS BEING APRIL 10TH, 1967 OUGHT TO HAVE BEEN MADE KNOWN TO THE RESPONDENT AND INTERVENERS PRIOR TO THE DATE UPON WHICH THE DECISION HEREIN WAS RELEASED.

THE RESPONDENT PROPOSES TO RELY UPON THE DECISION OF THE ONTARIO COURT OF APPEAL IN REGINA V. ONTARIO LABOUR RELATIONS BOARD. EX PARTE HANNIGAN ET AL.

(1967), C.C.H. L.L.R. P. 14,039, WHICH HAD NOT BEEN RELEASED AT THE TIME OF THE FINAL HEARING BEFORE THE BOARD IN THIS MATTER.

5. WHILE THIS CASE AROSE PRIOR TO THE RELEASE OF THE DECISION OF THE ONTARIO COURT OF APPEAL IN REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE HANNIGAN ET AL., REFERRED TO ABOVE, THE BOARD'S DECISION WAS NOT MADE UNTIL AFTER THAT DECISION WAS RELEASED AND THE BOARD TOOK THE DECISION INTO CONSIDERATION IN FIXING THE "MEMBER" DATE AS CONTAINED IN PARAGRAPH 17 OF THE BOARD'S DECISION OF JULY 27TH, 1967.

6. IT SHOULD BE NOTED THAT IN PRE-HEARING REPRESENTATION VOTE APPLICATIONS THE EMPLOYEES IN THE VOTING CONSTITUENCY MUST BE MEMBERS OF THE TRADE UNION "AT THE TIME THE APPLICATION WAS MADE". ACCORDINGLY, IN PRE-HEARING REPRESENTATION VOTE APPLICATIONS THE BOARD HAS NO DISCRETION IN THE MATTER.

7. IN THE INSTANT CASE, THE APPLICANT DID NOT REQUEST THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AND ACCORDINGLY THIS APPLICATION HAS BEEN DEALT WITH PURSUANT TO THE PROVISIONS OF SECTION 7(1) OF THE ACT. IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE SINCE 1960, WHEN THIS LEGISLATION FIRST CAME INTO EFFECT, TO TREAT THE TERMINAL DATE IN AN APPLICATION FOR CERTIFICATION (WHERE NO PRE-HEARING REPRESENTATION VOTE WAS REQUESTED) AS THE DATE FOR ASCERTAINING THE MEMBERSHIP POSITION OF THE APPLICANT UNION. PRIOR TO THE DECISION OF THE COURT OF APPEAL IN REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE HANNIGAN ET AL., THE BOARD IN FIXING THE TERMINAL DATE AS THE DATE FOR ASCERTAINING THE MEMBERSHIP POSITION OF THE UNION WAS OF OPINION THAT ITS DECISIONS SET FORTH, WITH SUFFICIENT PARTICULARITY, THE FACT THAT THE TERMINAL DATE WAS THE DATE FIXED FOR ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT. HOWEVER, THE COURT FOUND THAT SUCH WAS NOT THE CASE. ACCORDINGLY, AND IN COMPLIANCE WITH THE DIRECTION OF THE COURT, AS SET OUT IN THE REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE HANNIGAN ET AL., THE BOARD ADOPTED THE PRACTICE OF MAKING A DETERMINATION OF THE MEMBERSHIP DATE IN THE TERMS SET FORTH IN PARAGRAPH 17 OF THE BOARD'S DECISION OF JULY 27TH, 1967 IN THIS MATTER.

8. COUNSEL FOR THE OBJECTORS WHO APPEARED AT THE HEARING IN THIS MATTER ADVISED THE BOARD THAT HE HAD APPEARED ON BEHALF OF THE BOARD AT THE TIME THE COURT OF APPEAL HEARD THE ARGUMENT IN THE REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE HANNIGAN ET AL. AND WAS FULLY AWARE OF THE ISSUES INVOLVED IN THAT CASE. COUNSEL FOR THE OBJECTORS RAISED THE ISSUE IN ARGUMENT BEFORE THE BOARD IN THIS MATTER AND REQUESTED THAT THE BOARD POSTPONE ITS DECISION IN THIS CASE UNTIL THE COURT HAD DELIVERED ITS DECISION. THE ISSUE HAVING BEEN RAISED IN THIS WAY BY COUNSEL, IT MUST BE SAID THAT THE ISSUE WAS DIRECTLY BEFORE THE PARTIES AT THAT TIME. NONE OF THE

PARTIES SUGGESTED THAT A DATE OTHER THAN THE TERMINAL DATE SHOULD BE USED FOR ASCERTAINING THE MEMBERSHIP POSITION OF THE APPLICANT AND IN FACT IN THE REQUESTS FOR REVIEW OF THE RESPONDENT AND THE OBJECTORS, NO OTHER DATE IS SUGGESTED AS BEING A MORE APPROPRIATE DATE. IN ANY EVENT, THE ISSUE AS TO THE DATE AS OF WHICH THE BOARD SHOULD CONSIDER MEMBERSHIP EVIDENCE IS BEFORE THE BOARD IN EACH AND EVERY APPLICATION FOR CERTIFICATION. THE PARTIES IN THIS CASE HAD THE OPPORTUNITY TO CALL EVIDENCE AND TO MAKE REPRESENTATIONS WITH RESPECT TO THIS ISSUE BUT, EXCEPT AS REFERRED TO ABOVE, FAILED TO DO SO.

9. IN ADDITION, THE ISSUE RAISED BY THE RESPONDENT AND THE OBJECTORS AS TO THE MEMBERSHIP DATE HAS NO BEARING ON THE RELEVANCE OR ACCEPTABILITY OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION. THE REASON NO EFFECT WAS GIVEN TO THE DOCUMENTS FILED IN OPPOSITION RELATED TO THE ISSUE AS TO WHETHER THEY REPRESENTED A VOLUNTARY EXPRESSION OF THE EMPLOYEES' TRUE WISHES. THE DATE AS OF WHICH THE PETITIONS WERE CONSIDERED HAD NO EFFECT ON THIS LATTER ISSUE. EVEN IF A DATE OTHER THAN THE TERMINAL DATE HAD BEEN USED FOR CONSIDERING THE MEMBERSHIP EVIDENCE, THE OBJECTIVE EVIDENCE AS TO THE MANNER IN WHICH THE PETITIONS WERE ORIGINATED AND WERE CIRCULATED FOR SIGNATURE WOULD IN NO WAY BE AFFECTED BY SUCH ALTERNATIVE DATE.

10. IT IS TO BE NOTED THAT NO DENIAL OF NATURAL JUSTICE HAS BEEN ASSERTED BY EITHER THE RESPONDENT OR THE OBJECTORS. SINCE THE BOARD CONSIDERED ALL THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION AND THERE IS NO SUGGESTION THAT DOCUMENTS IN OPPOSITION TO THE APPLICATION WERE REFUSED BY THE BOARD, WE FIND THE CHALLENGE TO THE BOARD'S DECISION DATED JULY 27TH, 1967 IN THIS MATTER, WITH RESPECT TO THE MEMBERSHIP DATE, TO BE A PURELY TECHNICAL OBJECTION AND IN THE CIRCUMSTANCES SET OUT ABOVE, THE OBJECTION HAS NO MERIT.

11. SINCE ALL THE ISSUES RAISED BY THE RESPONDENT AND THE OBJECTORS WERE BEFORE THE BOARD PRIOR TO THE BOARD MAKING ITS DECISION DATED JULY 27TH, 1967 IN THIS MATTER, AND SINCE THE PARTIES HAD AN OPPORTUNITY TO CALL EVIDENCE AND MAKE ANY ARGUMENT THEY WISHED TO MAKE WITH RESPECT TO SUCH ISSUES, AND SINCE THE RESPONDENT AND THE OBJECTORS HAVE NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER, THE BOARD DOES NOT DEEM IT ADVISABLE TO LIST THIS MATTER FOR HEARING OR TO RECONSIDER, VARY OR REVOKE ITS DECISION OF JULY 27TH, 1967, IN THIS MATTER.

12. THE REQUESTS OF THE RESPONDENT AND THE OBJECTORS ARE THEREFORE DENIED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

OCTOBER 5, 1967.

I DISSENT. MY CONCLUSIONS WITH RESPECT TO THE FINDINGS OF FACT OF THE MAJORITY OF THE BOARD IN ITS DECISION OF JULY 27TH, 1967 ARE RECORDED IN MY DISSENT OF THAT DATE AND I DO NOT INTEND



TO DEAL WITH THEM AGAIN AT THIS TIME.

WITH RESPECT TO THE OTHER GROUND FOR REQUESTING A REVIEW AS SET OUT IN PARAGRAPH 4 OF THE MAJORITY DECISION, I WOULD HAVE LISTED THIS MATTER FOR HEARING BEFORE US IN ORDER THAT THE PARTIES MIGHT BE ALLOWED TO MAKE SUCH SUBMISSIONS AND CALL SUCH EVIDENCE AS THEY DEEMED NECESSARY IN SUPPORT OF THEIR RESPECTIVE POSITIONS.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

13235-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO: CLC (APPLICANT) v. KRAFT FOODS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF THE BOARD: OCTOBER 30, 1967.

1. IN ITS DECISION OF JULY 12TH, 1967, THE BOARD ORDERED A REPRESENTATION VOTE AMONG THE EMPLOYEES OF THE RESPONDENT. PARAGRAPH 6 OF THAT DECISION READS AS FOLLOWS:

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 19TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

2. BY LETTER DATED AUGUST 2ND, 1967, THE GROUP OF OBJECTORS HEREIN REQUESTED THE BOARD TO REVIEW ITS DECISION. THEY SUBMITTED THAT THE COURT OF APPEAL HAD HELD IN THE CASE OF HANNIGAN V. PARKE-DAVIS ET AL, THAT THE DATE TO BE DETERMINED UNDER SECTION 7 OF THE LABOUR RELATIONS ACT FOR THE PURPOSE OF ASCERTAINING UNION MEMBERSHIP WAS THE DATE OF THE HEARING, WHEREAS IN THE INSTANT CASE THE BOARD HAD FIXED THE TERMINAL DATE OF THE APPLICATION FOR THAT PURPOSE. IT IS UPON THIS ALLEGED CONFLICT THAT THE REQUEST FOR REVIEW IS BASED.

3. IT APPEARS CLEAR TO THE BOARD THAT IN THE PARKE-DAVIS CASE THE COURT OF APPEAL STATED NO MORE THAN THAT IN ORDER TO COMPLY WITH THE REQUIREMENTS OF SECTION 7(1) OF THE LABOUR RELATIONS ACT, THE BOARD MUST, IN EACH CASE, DETERMINE THE TIME AS OF WHICH THE NUMBER OF EMPLOYEES WHO ARE MEMBERS OF THE TRADE UNION SHALL BE ASCERTAINED. WHAT THAT TIME SHOULD BE IS NOT SPECIFIED BY THE COURT AND THE MATTER CLEARLY FALLS TO BE DETERMINED BY THE BOARD IN EACH CASE. IN THE INSTANT CASE THE BOARD HAS DETERMINED THE TERMINAL DATE AS THE TIME AS OF WHICH UNION MEMBERSHIP IS ASCERTAINED. THE REQUEST FOR REVIEW IS THEREFORE DENIED.

4. THE REPRESENTATION VOTE WAS HELD ON AUGUST 8TH, 1967, AND THE BALLOT BOX WAS SEALED.

5. AT THE TAKING OF THE VOTE THE UNION CHALLENGED THE RIGHT OF C. CARDINAL AND C. P. PITCHER TO CAST BALLOTS. THESE TWO EMPLOYEES' NAMES WERE LISTED ON THE VOTERS' LIST AGREED TO BY THE PARTIES PRIOR TO THE HOLDING OF THE VOTE. CARDINAL IS DESCRIBED AS AN INTAKE MAN AND PITCHER AS A STATIONARY ENGINEER. BOTH EMPLOYEES WERE PERMITTED TO VOTE BUT THEIR BALLOTS WERE SEGREGATED.

6. THE BASIS OF THE CHALLENGE IS THE ALLEGATION THAT BOTH THE ABOVE EMPLOYEES ARE PAID A SALARY, WHEREAS THE OTHER MEMBERS OF THE BARGAINING UNIT ARE PAID AN HOURLY RATE. NO OTHER REASON OR ARGUMENTS WERE ADVANCED FOR THE EXCLUSION OF THESE EMPLOYEES FROM THE BARGAINING UNIT. THE BOARD FINDS THAT THE METHOD OF PAYMENT STANDING ALONE DOES NOT WARRANT THE EXCLUSION OF THESE EMPLOYEES FROM THE BARGAINING UNIT. THE BOARD THEREFORE FINDS THAT C. CARDINAL AND C. P. PITCHER WERE ENTITLED TO CAST BALLOTS IN THE REPRESENTATION VOTE AND THAT THEIR BALLOTS SHOULD BE COUNTED TOGETHER WITH ALL OTHER BALLOTS WHEN AND IF THE BOARD DIRECTS THE COUNTING OF THE BALLOTS.

7. IN A LETTER TO THE BOARD DATED AUGUST 14TH, 1967, THE FOLLOWING NINE PERSONS, ROBERT PILON, STANLEY SWERDFIGER, GERALD BRUYERE, HENRY PRIEUR, REAL GAUTHIER, RICHARD LAFRANCE, YVONNE PILON, MARY MCBRIDE AND THERESE ROBERT, ALL PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, MADE THE FOLLOWING ALLEGATION WITH RESPECT TO THE REPRESENTATION VOTE:

AFTER THE TWO HOUR DEADLINE WAS PAST TO STOP ELECTIONEERING, NEIL GRAIG AND CHARLES PICTURE WENT AROUND AND ASKED MOST EMPLOYEES IF THEY HAD HEARD A RUMOUR THAT THREE OF THE MOST ACTIVE MALE EMPLOYEES FOR THE UNION ENTERED THE OFFICE PLEADING WITH THE MANAGEMENT FOR FORGIVENESS FOR STARTING UNION TALK AND ASKING THAT THE VOTE BE CANCELLED.

THIS WAS DONE AFTER THE DEADLINE WAS PAST AND THE RUMOUR GRADUALLY SPREAD THROUGHOUT THE FACTORY.

THE ALLEGATION APPEARS TO CHARGE THE EMPLOYEES NAMED WITH BREACH OF RULE 43 (J) OF THE BOARD'S RULES OF PROCEDURE.

8. THE MATTER IS REFERRED TO THE REGISTRAR TO LIST TO HEAR REPRESENTATIONS AND EVIDENCE WITH RESPECT TO THE ALLEGATIONS MADE BY THE ABOVE NAMED NINE PERSONS AGAINST NEIL CRAIG AND CHARLES PICTURE, CONTAINED IN THE LETTER OF AUGUST 14TH, 1967, REFERRED TO ABOVE.

13115-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. (APPLICANT) v. D'ANGELO PLASTERING CO. LTD., (DOMENICO D'ANGELO) (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: C. THOMAS FOR THE APPLICANT; C. H. GOULET FOR THE RESPONDENT; AND J. P. NELLIGAN AND J. G. DENIS FOR OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 124.

DECISION OF THE BOARD: OCTOBER 18, 1967.

1. THIS IS A REQUEST BY THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 124, HEREINAFTER REFERRED TO AS "LOCAL 124", UNDER SECTION 79 OF THE LABOUR RELATIONS ACT, FOR THE BOARD TO RECONSIDER ITS ORDER OF MAY 24TH, 1967 BY WHICH IT CERTIFIED THE APPLICANT TRADE UNION, HEREINAFTER REFERRED TO AS THE "N.C.C.L.", AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT COMPANY ENGAGED IN ITS PLASTERING OPERATIONS IN THE COUNTIED OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT. THE REQUEST FOR REVIEW IS DATED AUGUST 30TH, 1967. IN DUE COURSE, THE MATTER WAS PUT ON FOR HEARING IN OTTAWA, AT WHICH TIME THE BOARD HEARD EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES.

2. LOCAL 124 DID NOT INTERVENE IN THE ORIGINAL APPLICATION FOR CERTIFICATION BY THE N.C.C.L. IT ALLEGES, HOWEVER THAT, PRIOR TO THAT APPLICATION, IT HAD BEEN NEGOTIATING WITH THE RESPONDENT COMPANY FOR A COLLECTIVE AGREEMENT, THAT IT REPRESENTED A MAJORITY OF THE PLASTERERS IN THE EMPLOY OF THE RESPONDENT AND, FURTHER, THAT ON FRIDAY, MAY 26TH, TWO DAYS AFTER THE BOARD'S ORDER REFERRED TO ABOVE, THE RESPONDENT AND LOCAL 124 DID IN FACT SIGN A COLLECTIVE AGREEMENT COVERING THE SAME EMPLOYEES FOR WHOM THE N.C.C.L. WAS CERTIFIED AS BARGAINING AGENT. LOCAL 124 ALSO SOUGHT TO SHOW THAT THE RESPONDENT COMPANY DID NOT HAVE EMPLOYEES AT WORK ON THE JOB SITES REFERRED TO IN THE N.C.C.L. APPLICATION ON THE DATE OF THE MAKING OF THE APPLICATION. FINALLY, IT POINTED OUT THAT NEITHER THE N.C.C.L. NOR THE RESPONDENT COMPANY INDICATED IN THE APPROPRIATE PLACES ON THE APPLICATION AND REPLY FORMS THAT LOCAL 124 WAS CLAIMING TO REPRESENT THE RESPONDENT'S PLASTERERS. LOCAL 124 DID NOT RELY ON THE COLLECTIVE AGREEMENT AS BEING A BAR TO THE N.C.C.L. APPLICATION, SINCE IT

WAS SIGNED AFTER THE DATE OF THE BOARD'S ORDER, BUT IT DID ARGUE THAT THE COMPANY AND THE N.C.C.L. SHOULD HAVE DISCLOSED TO THE BOARD THAT LOCAL 124 WAS CLAIMING TO REPRESENT THE PLASTERERS AND, IN THE LIGHT OF ALL ITS ALLEGATIONS, THE BOARD OUGHT TO SET ASIDE ITS EARLIER ORDER, LEAVING BOTH UNIONS IN A POSITION TO MAKE AN APPLICATION FOR CERTIFICATION AT A FUTURE DATE IF EITHER SO WISHED.

3. THE DIFFICULTY WITH THIS ARGUMENT IS THAT THE EVIDENCE HEARD DOES NOT SUPPORT A NUMBER OF THE ALLEGATIONS MADE BY LOCAL 124. WHILE IT IS ADMITTED THAT AN AGREEMENT WAS SIGNED ON MAY 26TH, 1967, LOCAL 124 WAS UNABLE TO SHOW THAT THE RESPONDENT DID NOT HAVE EMPLOYEES AT WORK ON THE JOB SITES IN QUESTION OR THAT THERE WAS ANYTHING WRONG WITH THE LIST OF EMPLOYEES FILED BY THE RESPONDENT COMPANY IN CONNECTION WITH THE N.C.C.L. APPLICATION. FURTHER, THERE IS NO EVIDENCE TO SUPPORT THE CONTENTION OF LOCAL 124 THAT IT REPRESENTED, THAT IS, THAT IT HAD AS MEMBERS, A MAJORITY OF THE PLASTERERS IN THE RESPONDENT'S EMPLOY. THE RESPONDENT COMPANY WAS NOT THE CONTRACTOR AT A JOB SITE WHERE, APPARENTLY, LOCAL 124 HAD SOME MEMBERS EMPLOYED, BUT WAS IN FACT THE CONTRACTOR AT ANOTHER JOB SITE OF WHICH LOCAL 124 WAS UNAWARE. THIS, NO DOUBT, ACCOUNTS IN PART FOR THE FACT THAT LOCAL 124 WAS ABLE TO FILE EVIDENCE OF MEMBERSHIP FOR ONLY ONE OF THE EIGHT PERSONS ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT COMPANY IN CONNECTION WITH THE N.C.C.L. APPLICATION. FURTHERMORE, ASSUMING THAT THE RESPONDENT COMPANY OUGHT TO HAVE DISCLOSED TO THE BOARD THAT LOCAL 124 WAS ATTEMPTING TO NEGOTIATE A COLLECTIVE AGREEMENT WITH IT, THIS AT THE MOST WOULD ONLY HAVE RESULTED IN THE BOARD FORMALLY NOTIFYING LOCAL 124 OF THE N.C.C.L. APPLICATION. HOWEVER, IT IS CLEAR THAT ON THE 20TH OF MAY LOCAL 124 KNEW OF THE N.C.C.L. APPLICATION BUT TOOK NO STEPS TOWARDS INTERVENING IN THAT APPLICATION, THE TERMINAL DATE FOR WHICH WAS MAY 23RD, 1967. UNDER SUBSECTION 2 OF SECTION 71 OF THE BOARD'S RULES OF PROCEDURE, THERE IS A CLEAR ONUS ON A UNION, CLAIMING TO REPRESENT OR TO BE THE BARGAINING AGENT OF ANY EMPLOYEES WHO MAY BE AFFECTED BY AN APPLICATION FOR CERTIFICATION, TO NOTIFY THE REGISTRAR OF THE BOARD IMMEDIATELY BY TELEGRAM OF ITS CLAIM AND OF ITS INTENTION TO INTERVENE IN THE PROCEEDINGS. SEE ALSO SUBSECTION 1 OF SECTION 72. AS WAS POINTED OUT ABOVE, LOCAL 124 TOOK NO ACTION BEFORE THIS BOARD UNTIL AUGUST 30TH, 1967.

4. HAVING REGARD TO ALL THE FOREGOING CONSIDERATIONS, WE ARE NOT PREPARED TO REVOKE OUR DECISION OF MAY 24TH, 1967 AND THE REQUEST OF LOCAL 124 IS THEREFORE DENIED.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

13595-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. WESTWOOD DRAIN COMPANY LIMITED (RESPONDENT).

6. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE NAMES OF MARIO CESTRO, GIULIO DIROCA AND PAUL VAN DER VET BE REMOVED



FROM THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT FOURTEEN LABOURERS EMPLOYED BY THE RESPONDENT ON THE DATE OF APPLICATION WERE ENGAGED IN THE LAYING OF DRAIN PIPE AND PAVING WORK ON PUBLIC THOROUGHFARES AT FOUR LOCATIONS IN GEOGRAPHIC AREA No. 8. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT ON THE DATE OF APPLICATION TWENTY-FIVE LABOURERS IN THE EMPLOY OF THE RESPONDENT WERE CONSTRUCTING CONCRETE FOUNDATIONS FOR HOUSES AND LAYING DRAIN PIPE FROM THE LOT LINES TO THE HOUSES. THIS WORK, ACCORDING TO THE EXAMINER'S REPORT, WAS BEING DONE AT HOUSING SUBDIVISIONS IN FIVE LOCATIONS IN THE GEOGRAPHIC AREA WITH WHICH WE ARE HERE CONCERNED.

7. THE BOARD IN THE PAST HAS GIVEN RECOGNITION TO THE RESPECTIVE JURISDICTIONAL AREAS OF WORK CLAIMED BY THE APPLICANT, LOCAL No. 183, AND LOCAL No. 506 OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA IN THE BOARD'S CONSTRUCTION DIVISION GEOGRAPHIC AREA No. 8. THAT IS TO SAY, THE BOARD HAS RECOGNIZED THAT LOCAL 183 HAS JURISDICTION OVER ALL HEAVY CONSTRUCTION, INCLUDING THE LAYING OF DRAIN PIPES AND PAVING WORK ON PUBLIC THOROUGHFARES, AND THAT THE JURISDICTION OF LOCAL No. 506 IS LIMITED TO BUILDING PROJECTS, BUT INCLUDES THE LAYING OF DRAIN PIPE FROM THE STREET OR LOT LINES TO HOUSES.

(OCTOBER 10, 1967).

#### ADDENDUM

THE FOLLOWING CASE WAS INADVERTENTLY OMITTED FROM THE JUNE 1965 MONTHLY REPORT.

10452-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. PRE-CON MURRAY LIMITED (RESPONDENT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

A.E. GOLDEN AND A. MACISAAC APPEARING FOR THE APPLICANT; J. P. SANDERSON AND R. V. BRADLEY APPEARING FOR THE RESPONDENT; AND D. W. FORGIE AND R. CARTON APPEARING FOR THE INTERVENER, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506.

. . .

3. THE APPLICANT TRADE UNION SEEKS TO SEVER ITS CRAFT OF REINFORCING RODMEN FROM AN ALL-EMPLOYEE BARGAINING UNIT REPRESENTED BY THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON

LABOURERS' UNION OF AMERICA, HEREINAFTER REFERRED TO AS THE "INTERNATIONAL". BOTH THE RESPONDENT AND THE INTERNATIONAL OPPOSE THIS APPLICATION AND URGE THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT AND DISMISS THE APPLICATION. THERE IS NO QUESTION THAT THE APPLICANT HAS FOR YEARS REPRESENTED THE CRAFT OF REINFORCING RODMEN, AND HAD THERE BEEN NO INCUMBENT TRADE UNION IN THIS CASE, THE APPLICANT TRADE UNION WOULD HAVE BEEN ENTITLED UNDER SECTION 6(2) TO A BARGAINING UNIT OF REINFORCING RODMEN. THE QUESTION THEREFORE ARISES WHETHER THE BOARD SHOULD EXERCISE ITS DISCRETION UNDER SECTION 6(2) AND REFUSE TO FIND THE PROPOSED BARGAINING UNIT APPROPRIATE FOR COLLECTIVE BARGAINING.

WE HAVE CAREFULLY EXAMINED THE DECISIONS OF THE BOARD REFERRED TO BY COUNSEL, AS WELL AS THE CASES CITED THEREIN. IF THIS WERE A CASE INVOLVING AN ATTEMPT TO CARVE OUT A CRAFT UNIT FROM AN ALL-EMPLOYEE UNIT IN A MANUFACTURING INDUSTRY, THE CASES PROBABLY SUPPORT THE SUBMISSIONS OF THE RESPONDENT AND THE INTERVENER. HOWEVER, THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE ENGAGED IN WORK IN THE CONSTRUCTION INDUSTRY AND PREVIOUS BOARD DECISIONS IN SUCH CIRCUMSTANCES INDICATE THAT DIFFERENT CONSIDERATIONS ARE APPLICABLE. THUS, IN THE KENT TILE AND MARBLE CO. LTD. CASE, (1961) 61 C.L.L.R. ¶16,204, C.L.S. 76-756, THE BOARD SAID, "IN THE CONSTRUCTION INDUSTRY, WHERE ORGANIZATION HAS TRADITIONALLY BEEN CARRIED ON ON A CRAFT BASIS, IT IS OUR OPINION THAT GREAT WEIGHT MUST BE GIVEN TO CRAFT INTERESTS." WHEN THE REASONS OF THE MAJORITY DECISION IN THAT CASE ARE READ ALONG SIDE THOSE OF THE DISSENTING OPINION, IT WOULD APPEAR THAT APART POSSIBLY FROM THE FACT THAT THE INCUMBENT TRADE UNION MADE NO REPRESENTATIONS, THE ONLY FACTOR CONSIDERED BY THE MAJORITY IN DETERMINING NOT TO EXERCISE ITS DISCRETION WAS THE FACT THAT THE APPLICATION INVOLVED EMPLOYEES IN THE CONSTRUCTION INDUSTRY. THIS WOULD SEEM TO BE BORNE OUT BY A SUBSEQUENT DECISION OF THE BOARD IN THE BARNETT-McQUEEN COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORTS, JULY 1962, P. 121 AT P. 122.

HOWEVER, IT IS NOT NECESSARY FOR US TO DETERMINE WHETHER THE BOARD INTENDED TO GO THIS FAR. CERTAINLY IT IS CLEAR THAT GREAT WEIGHT MUST BE GIVEN TO CRAFT INTERESTS IN THE CONSTRUCTION INDUSTRY. MOREOVER, IN THIS CASE THERE IS ANOTHER FACTOR WHICH IS OF SOME SIGNIFICANCE. THE COLLECTIVE AGREEMENT WHICH WAS BINDING ON THE RESPONDENT AND THE INTERNATIONAL PROVIDED IN ARTICLE 4.02:

IT IS HEREBY AGREED THAT WHERE IT IS NECESSARY FOR ECONOMY AND EXPEDIENCY ON ANY PROJECT TO EMPLOY KEY PERSONNEL AND COMPOSITE CREWS IN THE PROVINCE OF ONTARIO, THE SAID EMPLOYER SHALL BE ALLOWED SAME, WITH THE UNDERSTANDING THAT SAID KEY PERSONNEL OR COMPOSITE CREWS ARE MEMBERS IN GOOD STANDING OF THE BUILDING AND CONSTRUCTION

TRADE UNIONS AND SUCH PERSONS ARE AVAILABLE  
LOCALLY.

IT WAS UNDER THIS ARTICLE, PRESUMABLY, THAT THE RODMEN IN THE PRESENT CASE WERE HIRED. ARTICLE V(A) APPEARS TO PROVIDE THAT WHERE MEMBERS OF TRADE UNIONS OTHER THAN THE INTERNATIONAL ARE HIRED PURSUANT TO ARTICLE 4.02, THEIR WAGES, HOURS AND WORKING CONDITIONS SHALL BE DETERMINED BY ESTABLISHED AGREEMENTS OF THE LOCAL UNION TO WHICH THEY BELONG.

IN OTHER WORDS, WHILE THE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL COVERS ALL EMPLOYEES AND PROVIDES THAT THE UNION IS TO SUPPLY WORKMEN, THE PARTIES RECOGNIZE THAT FROM TIME TO TIME THE RESPONDENT MAY REQUIRE THE SERVICES OF CRAFTSMEN WHOM THE UNION IS UNABLE TO SUPPLY. THESE MAY BE HIRED PROVIDED THEY ARE MEMBERS IN GOOD STANDING OF THEIR RESPECTIVE UNIONS AND THEIR WAGES AND WORKING CONDITIONS ARE GOVERNED BY THOSE BARGAINED FOR BY THEIR OWN UNIONS.

ASSUMING ARTICLE 4.02 TO BE A VALID CLAUSE (AND WE DO NOT SO DECIDE) IT SEEMS TO US THAT IN THE CIRCUMSTANCES OUTLINED ABOVE, THE INCUMBENT TRADE UNION WHICH, IN THE MAIN, ORGANIZES ON A CRAFT AND NOT ON AN INDUSTRIAL BASIS CANNOT BE HEARD TO SAY THAT EMPLOYEES SO HIRED HAVE NO RIGHT TO BE REPRESENTED BY THEIR OWN CRAFT ORGANIZATION IF THE APPLICATION IS OTHERWISE A TIMELY ONE. MOREOVER, IN OUR VIEW, THE EMPLOYER IS IN REALLY NO BETTER POSITION THAN THE INCUMBENT SINCE IT IS A PARTY TO THE AGREEMENT IN QUESTION DESPITE THE FACT THAT, CONDUCTING AS IT DOES A BUSINESS IN THE CONSTRUCTION INDUSTRY, IT MUST SURELY BE AWARE OF THE IMPORTANCE OF CRAFT INTERESTS IN THAT FIELD OF ENDEAVOUR.

IN THE LIGHT OF THE ABOVE CONSIDERATIONS, WE HAVE COME TO THE CONCLUSION THAT THIS IS NOT A CASE IN WHICH WE OUGHT TO EXERCISE OUR DISCRETION IN FAVOUR OF THE RESPONDENT AND THE INCUMBENT TRADE UNION.

4. THE BOARD THEREFORE FINDS FURTHER THAT ALL REINFORCING RODMEN EMPLOYED BY THE RESPONDENT WORKING WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

6. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT AND WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE ASKED TO INDICATE WHETHER THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT OR THROUGH THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA.

8. THE BOARD NOTES THAT AT THE DATE OF THE HEARING AS DISTINCT FROM THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT HAD NO EMPLOYEES IN THE BARGAINING UNIT. SHOULD THIS CONDITION PREVAIL UNTIL DECEMBER 31ST, 1965, ANY PARTY MAY APPLY TO THE BOARD FOR SUCH RELIEF AS MAY BE DEEMED NECESSARY.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

JUNE 17, 1965.



STATISTICAL TABLES FOR OCTOBER 1967

TABLE 1

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	OCTOBER 1ST 7 MONTHS OF 1967	1967-68	1966-67
I. CERTIFICATION	66	578	592
II. DECLARATION TERMINATING BARGAINING RIGHTS	10	54	22
III. DECLARATION OF SUCCESSOR STATUS	4	10	6
IV. DECLARATION THAT STRIKE UNLAWFUL	-	27	14
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	12	-
VI. CONSENT TO PROSECUTE	1	67	54
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	85	70
VIII. MISCELLANEOUS	<u>2</u>	<u>28</u>	<u>38</u>
TOTAL	<u>89</u>	<u>861</u>	<u>796</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	OCTOBER 1ST 7 MONTHS OF 1967	1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	79	562	533

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	OCTOBER 1967	1ST 7 MONTHS FISCAL YR. 1967-68	1966-67
I. CERTIFICATION	67	577	590
II. DECLARATION TERMINATING BARGAINING RIGHTS	6	41	21
III. DECLARATION OF SUCCESSOR STATUS	1	8	5
IV. DECLARATION THAT STRIKE UNLAWFUL	1	29	13
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	11	-
VI. CONSENT TO PROSECUTE	3	57	45
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	22	111	71
VIII. MISCELLANEOUS	<u>9</u>	<u>50</u>	<u>35</u>
TOTAL	<u>109</u>	<u>884</u>	<u>780</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
<u>OCTOBER</u>	<u>1ST 7 MTHS</u>	<u>FISCAL YR.</u>	<u>OCTOBER</u>	<u>1ST 7 MTHS</u>	<u>FISCAL YR.</u>
<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>

I. CERTIFICATION

GRANTED	53	410	431	2752	4420	11075
DISMISSED	17	122	104	422	8202	9054
WITHDRAWN	<u>2</u>	<u>45</u>	<u>55</u>	<u>41</u>	<u>1035</u>	<u>798</u>
TOTAL	<u>67</u>	<u>577</u>	<u>590</u>	<u>3215</u>	<u>13657</u>	<u>20927</u>

II. TERMINATION  
OF BARGAINING  
RIGHTS

GRANTED	1	19	14	50	305	462
DISMISSED	4	20	7	53	737	187
WITHDRAWN	<u>1</u>	<u>2</u>	<u>-</u>	<u>40</u>	<u>41</u>	<u>-</u>
TOTAL	<u>6</u>	<u>41</u>	<u>21</u>	<u>143</u>	<u>1083</u>	<u>649</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>OCTOBER</u>	<u>1ST 7 MONTHS</u>	<u>FISCAL YR.</u>
		<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	1	2	2
	DISMISSED	-	3	-
	WITHDRAWN	-	<u>24</u>	<u>11</u>
	TOTAL	<u>1</u>	<u>29</u>	<u>13</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	-
	WITHDRAWN	-	<u>10</u>	-
	TOTAL	<u>-</u>	<u>11</u>	<u>-</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	5	7
	DISMISSED	-	8	4
	WITHDRAWN	<u>3</u>	<u>44</u>	<u>34</u>
	TOTAL	<u>3</u>	<u>57</u>	<u>45</u>



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF

BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	OCTOBER 1967	1ST 7 MONTHS 1967-68	FISCAL YEAR 1966-67
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	10	10
POST-HEARING VOTE	3	27	23
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	7	5
POST-HEARING VOTE	3	24	41
BALLOTS NOT COUNTED	-	1	-
TOTAL	<u>8</u>	<u>69</u>	<u>79</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY

THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	OCTOBER 1967	1ST 7 MONTHS 1967-68	FISCAL YEAR 1966-67
*RESPONDENT UNION SUCCESSFUL	-	4	4
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>12</u>	<u>11</u>
TOTAL	<u>1</u>	<u>16</u>	<u>15</u>

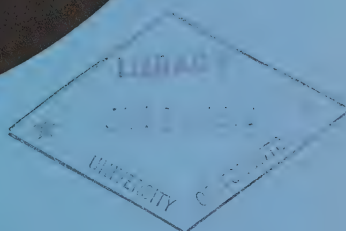
\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

NOVEMBER 1967



ONTARIO

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ONTARIO LABOUR RELATIONS BOARD



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING NOVEMBER 1967

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

NO VOTE CONDUCTED

13167-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101  
(APPLICANT) V. WARNER-LAMBERT CANADA LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT AT 2200 EGLINTON AVENUE EAST IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER."  
(5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 724 ).

13398-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS,  
AFL, CIO, CLC (APPLICANT) V. CANADA CATERING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS OPERATIONS AT PHILLIPS CABLES LIMITED, AUTOMATIC ELECTRIC (CANADA) LIMITED AND PARKE DAVIS & COMPANY LIMITED AT BROCKVILLE, AND BROCKVILLE CHEMICALS LTD. AT MAITLAND, SAVE AND EXCEPT MANAGERS, MANAGERESSES, PERSONS ABOVE THE RANK OF MANAGER OR MANAGERESS, AND VENDING SUPERVISOR." (22 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 726 ).

13475-67-R: NURSES' ASSOCIATION OF THE BOROUGH OF YORK HEALTH DEPARTMENT (APPLICANT) V. LOCAL BOARD OF HEALTH OF THE CORPORATION OF THE BOROUGH OF YORK (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT DIRECTOR OF NURSES AND PERSONS ABOVE THE RANK OF DIRECTOR OF NURSES." (32 EMPLOYEES IN THE UNIT).

13567-67-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CANADA CEMENT COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).



UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE GENERAL PLANT OFFICE AND STORES OFFICE IN THE TOWNSHIP OF WEST ZORRA, SAVE AND EXCEPT FOREMEN AND ASSISTANT CHIEF CLERK, PERSONS ABOVE THE RANK OF FOREMAN AND ASSISTANT CHIEF CLERK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 725 ).

13621-67-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CANADA CEMENT COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS GENERAL PLANT OFFICE, SHIPPING OFFICE AND STORES OFFICE IN THE TOWNSHIP OF THURLOW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ASSISTANT CHIEF CLERK, PERSONS ABOVE THE RANK OF ASSISTANT CHIEF CLERK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE SECRETARY TO THE PLANT SUPERINTENDENT IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS EXCLUDED FROM THE BARGAINING UNIT.

13668-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2557 (INDUSTRIAL) (APPLICANT) V. M & D KENNEDY CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOP MILL AT VESPRE TOWNSHIP IN THE COUNTY OF SIMCOE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13669-67-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 (APPLICANT) V. MARPON COMPANY LIMITED OPERATING AS "CALCOT HOTEL" (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

13679-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T., (APPLICANT) V. REDY-MIX CONCRETE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

13680-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. CURRAN & BRIGGS READY-MIX LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA AND AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (44 EMPLOYEES IN THE UNIT).

13681-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CANADIAN MOULDINGS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (56 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 743).

13688-67-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. KENNEDY GRAPHIC PLATE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ARTISTS, STRIPPERS, CAMERAMEN, PLATE MAKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

13696-67-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. SERVICE GRAPHICS LIMITED (RESPONDENT) V. TORONTO TYPOGRAPHICAL UNION No. 91 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13716-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (APPLICANT) V. GRAND HOTEL (KINGSTON) LTD. CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF THE TALBOT HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND OFFICE STAFF." (26 EMPLOYEES IN THE UNIT).

13743-67-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. THE OWEN SOUND SUN-TIMES, PUBLISHED BY FLEMING PUBLISHING CO., LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 290 9TH STREET EAST, OWEN SOUND, EMPLOYED IN ITS NEWSPAPER COMPOSING, PRESS AND PERFORATING ROOMS, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT).

13748-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GENERAL FREEZER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (211 EMPLOYEES IN THE UNIT).

13763-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE SAULT STE. MARIE PUBLIC LIBRARY BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CHIEF LIBRARIAN AND LIBRARY BOARD SECRETARY, LIBRARY BOARD TREASURER AND SECRETARY-BOOK-KEEPER, ASSISTANT CHIEF LIBRARIAN AND ASSISTANT LIBRARY BOARD SECRETARY, SUPERVISOR OF BRANCH LIBRARIES, DEPARTMENT HEAD CHILDREN'S ROOM, DEPARTMENT HEAD ADULT SERVICES AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES DATED NOVEMBER 14TH, 1967).

13768-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. JOHNNY'S WELDING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13770-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. REI CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

13771-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. AIR KING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (70 EMPLOYEES IN THE UNIT).

13773-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. STEDS LIMITED (RESPONDENT).



UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13776-67-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL - CIO - CLC (APPLICANT) V. MORVAL PRODUCTS CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN, FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (102 EMPLOYEES IN THE UNIT).

13777-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. XEROX OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY IN THE INSTANT CASE, THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "OFFICE AND SALES STAFF" INCLUDES TECHNICAL REPRESENTATIVES.

13779-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. CANADIAN BECHTEL LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (INTERVENER).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (50 EMPLOYEES IN THE UNIT).

13780-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BLAIR CONSTRUCTION AND SUPPLIES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13784-67-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. KAYSON PLASTICS & CHEMICALS LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."  
(99 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ALL PERSONS CLASSIFIED BY THE RESPONDENT AS LABORATORY EMPLOYEES ARE INCLUDED IN THE BARGAINING UNIT, SAVE AND EXCEPT THOSE PERSONS CLASSIFIED AS CHEMISTS, CHEMISTS' ASSISTANTS, COLOUR TECHNOLOGISTS AND ASSISTANT COLOUR TECHNOLOGISTS WHO ARE AGREED TO BE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUNDS THAT THEY DO NOT SHARE A COMMUNITY OF INTEREST WITH OTHER EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

13785-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT)  
V. ED. WITMER & SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

13787-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

13788-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED IN THE STORE MAINTENANCE DEPARTMENT OF THE RESPONDENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

13790-67-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U., A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CENTRE GREY GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MARKDALE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY IN THE INSTANT CASE, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE LAUNDRY MANAGER IS NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

13791-67-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION, NO. 10 (APPLICANT) V. NU-BAR LITHO PLATE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT TORONTO EMPLOYED IN OFFSET PREPARATORY OPERATIONS, INCLUDING CAMERAMEN, PLATEMAKERS, FILM ASSEMBLERS (STRIPPERS) AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 752 ).

13797-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE METROPOLITAN GENERAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED AUGUST 15TH, 1967, PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 102, WHICH EXPIRED ON JULY 31ST, 1967, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 20 HOURS PER WEEK." (101 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, MEDICAL SOCIAL WORKERS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS, OPERATING ROOM TECHNICIANS, CASE ROOM TECHNICIANS AND ISOTOPE TECHNICIANS.

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT WARD CLERKS ARE PART OF THE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT REGISTERED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 754 ).

13800-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CORNEIL TRANSPORT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF LINDSAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

13804-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. G. D. MAXWELL CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

13805-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GAGNE R & G INCORPORATED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13806-67-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. NOPCO CHEMICAL CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY DEPARTMENT STAFF, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

13808-67-R: NURSES' ASSOCIATION HASTINGS AND PRINCE EDWARD COUNTIES HEALTH UNIT (APPLICANT) V. BOARD OF HEALTH, HASTINGS AND PRINCE EDWARD COUNTIES HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT THE DIRECTOR OF NURSES AND PERSONS ABOVE THE RANK OF DIRECTOR OF NURSES." (20 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13810-67-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. LAKESIDE BAPTIST CHURCH (RESPONDENT).



UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13811-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BOMAC STEEL COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (INTERVENER #2) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION #736 (INTERVENER #3).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN TORONTO TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCALS #721 AND #736." (75 EMPLOYEES IN THE UNIT).

13816-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. AMBASSADOR MOTOR HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (33 EMPLOYEES IN THE UNIT).

13817-67-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHARLES YEATES & COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR, CHIEF ENGINEER, CHIEF GARAGE MECHANIC, ICE CREAM AND MILK TERRITORY SALESMEN, OFFICE STAFF, DAIRY BAR STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (54 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13840-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. REDFERN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

13841-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. AMBICO SALES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).



UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

13852-67-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. SHOPPERS CITY LIMITED (CENTRAL SUPERMARKETS LIMITED) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT LONDON, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (66 EMPLOYEES IN THE UNIT).

13853-67-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 (APPLICANT) V. SOO DAIRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, ROUTE SUPERVISORS, SALES MANAGER, PERSONS ABOVE THE RANK OF FOREMAN, ROUTE SUPERVISOR AND SALES MANAGER, AND OFFICE STAFF." (38 EMPLOYEES IN THE UNIT).

13854-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (APPLICANT) V. FISHER-PRICE TOYS CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE, SAVE AND EXCEPT FOREMEN, FORELADIES AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN, FORELADY AND SUPERVISOR, OFFICE STAFF, SALES STAFF, DESIGN STAFF, STUDENTS EMPLOYED ON A UNIVERSITY CO-OPERATIVE TRAINING PROGRAMME, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (92 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13856-67-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. REXALL DRUG COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LABORATORY IN THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, DEVELOPMENT CHEMIST, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13857-67-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L (APPLICANT) V. MACLEAN-HUNTER PUBLISHING COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE BOROUGH OF NORTH YORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (44 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT LITHOGRAPHIC CAMERAMEN, STRIPPERS, PLATEMAKERS, PRESSMEN AND THEIR APPRENTICES AND HELPERS, LITHOGRAPHIC FEEDERS AND ROLLMEN ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 759 ).

13863-67-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. JAMES HOWDEN & PARSONS OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13868-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. NORTH AMERICAN PLASTICS CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (296 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 764 ).

13873-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. GENERAL MOTORS PRODUCTS OF CANADA, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS AUTOMOTIVE PARTS WAREHOUSE IN LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

13880-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) V. LIVINGSTON HAULAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS GRAVEL PIT AND SHOP ARE NOT INCLUDED IN THE BARGAINING UNIT.

13885-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (APPLICANT) V. FISHER-PRICE TOYS, (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE, SAVE AND EXCEPT MANAGERS, SUPERVISORS, DEPARTMENT HEADS, PERSONS ABOVE THE RANKS OF MANAGER, SUPERVISOR AND DEPARTMENT HEAD, SALES STAFF, PRIVATE SECRETARY TO THE GENERAL MANAGER, DESIGN STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13887-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HOSPITAL PARKING SERVICES CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FIELD SUPERVISORS, RESIDENT MANAGERS, PERSONS ABOVE THE RANKS OF FIELD SUPERVISOR AND RESIDENT MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13889-67-R: GARAGE EMPLOYEES LODGE No. 1120, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. THUNDER BAY VOLKSWAGON LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT SERVICE MANAGERS, SERVICE SALESMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PARTS DEPARTMENT MANAGER, NEW AND USED CAR SALESMEN, OFFICE STAFF, GAS PUMP ATTENDANTS AND OUTSIDE PARTS SALESMEN." (7 EMPLOYEES IN THE UNIT).

13890-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. AIR REDUCTION CANADA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

13900-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. B. H. CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

13919-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CLERK WINDOWS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

13747-67-R: GENERAL WORKERS' LOCAL 800, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. STEDMANS DIVISION OF MACLEOD STEDMAN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SECTION MANAGERS, PERSONS ABOVE THE RANK OF SECTION MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED  
VOTERS' LIST

33

NUMBER OF PERSONS WHO CAST BALLOTS

33

NUMBER OF BALLOTS MARKED IN FAVOUR  
OF APPLICANT

25

NUMBER OF BALLOTS MARKED AGAINST:  
APPLICANT

8



CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

12907-66-R: NURSES' ASSOCIATION SCARBOROUGH HEALTH DEPARTMENT (APPLICANT)  
V. THE CORPORATION OF THE BOROUGH OF SCARBOROUGH (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE  
RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF  
SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS  
PER WEEK." (53 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	41
NUMBER OF PERSONS WHO CAST BALLOTS	41
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	36
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	4

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE  
RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."  
(26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	19
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

13076-67-R: NURSES' ASSOCIATION PEEL MEMORIAL HOSPITAL (APPLICANT) V.  
PEEL MEMORIAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INT'L  
UNION, LOCAL 204 (INTERVENER).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT  
BRAMPTON, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD  
NURSE, HEAD INSTRUCTRESS IN THE REGISTERED NURSING ASSISTANTS SCHOOL,  
NURSES PERFORMING IN A NON-NURSING CAPACITY, NURSES REGULARLY EMPLOYED  
FOR NOT MORE THAN 24 HOURS PER WEEK AND EMPLOYEES COVERED BY A SUBSISTING  
COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BUILDING SERVICE EMPLOYEES  
UNION LOCAL 204." (114 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF  
THE PARTIES THAT INSTRUCTRESSES IN THE REGISTERED NURSING ASSISTANTS  
SCHOOL, OTHER THAN THE HEAD INSTRUCTRESS, ARE INCLUDED IN THE BARGAIN-  
ING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	92
NUMBER OF PERSONS WHO CAST BALLOTS	91

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	88
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

13077-67-R: NURSES' ASSOCIATION PEEL MEMORIAL HOSPITAL (APPLICANT)  
V. PEEL MEMORIAL HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT ASSISTANT TO THE DIRECTOR OF NURSING, PERSONS ABOVE THE RANK OF ASSISTANT TO THE DIRECTOR OF NURSING, NURSES PERFORMING IN A NON-NURSING CAPACITY, NURSES REGULARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BUILDING SERVICE EMPLOYEES UNION LOCAL 204 (81 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THAT THERE ARE NO HEAD NURSES EMPLOYED FOR LESS THAN 24 HOURS PER WEEK.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	66
NUMBER OF PERSONS WHO CAST BALLOTS	64
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	63
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

NO VOTE CONDUCTED

11208-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DILCON CONSTRUCTION LIMITED (RESPONDENT). (199 EMPLOYEES).

11209-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. FORMING CONSTRUCTION LIMITED (RESPONDENT). (53 EMPLOYEES).

11210-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. TORONTO FORMING COMPANY (RESPONDENT). (NO EMPLOYEES).

11211-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. DILCON CONSTRUCTION LIMITED (RESPONDENT). (55 EMPLOYEES).

11212-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) V. DI LORENZO CONSTRUCTION COMPANY (RESPONDENT). (97 EMPLOYEES).

11216-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. DILCON CONSTRUCTION LIMITED (RESPONDENT). (1 EMPLOYEE).

12676-66-R: UNION OF NURSING ASSISTANTS (APPLICANT) V. ESSEX HEALTH ASSOCIATION (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL UNION #210 (INTERVENER). (66 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 716 ).

12748-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. CLAIRSON EMPLOYEES' ASSOCIATION (INTERVENER). (NO EMPLOYEES).

13002-67-R: INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS' (CANADA) (APPLICANT) V. TRIBAG MINING COMPANY LIMITED (RESPONDENT).

13318-67-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. DRYDEN DISTRICT GENERAL HOSPITAL (RESPONDENT). (47 EMPLOYEES).

13319-67-R: RETAIL STORE EMPLOYEES UNION, LOCAL NO. 832 (APPLICANT) V. DRYDEN DISTRICT GENERAL HOSPITAL (RESPONDENT). (1 EMPLOYEE).

13524-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALLIED CONVEYORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (25 EMPLOYEES).

13551-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. L. ROCCA CONSTRUCTION COMPANY LIMITED (RESPONDENT). (8 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 735 ).

13624-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HOTEL DIEU HOSPITAL ST. CATHARINES (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 866 (INTERVENER). (240 EMPLOYEES).

13636-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. ALLIED BUILDING SUPPLY (OTTAWA) LIMITED (RESPONDENT) V. CANADIAN CONSTRUCTION WORKERS' UNION, DIV. OF NO. 1 N.C.C.L. (INTERVENER). (3 EMPLOYEES).

13656-67-R: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. PRECISION AUTOMOTIVE CO. LIMITED (RESPONDENT). (64 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 740 ).

13769-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CAMPBELL SOUP COMPANY LIMITED (RESPONDENT). (11 EMPLOYEES).

13778-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (APPLICANT) V. JULES FINE ENTERPRISES LIMITED (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 751).

13799-67-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHRISTIE CLEANERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13775-67-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. DELL CONSTRUCTION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF RESPONDENT IN THE DISTRICT OF KENORA SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

13490-67-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. TITAN CARTAGE LIMITED (RESPONDENT) V. OBJECTORS (GROUP OF EMPLOYEES).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER AND OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15

13519-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. RIO LUMBER CO. LIMITED (RESPONDENT).



UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	7

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

11867-66-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. PARKE, DAVIS & COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

13789-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT). (19 EMPLOYEES).

13851-67-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, A.F.L.-C.I.O.-C.L.C., IN HAMILTON (APPLICANT) V. MR. H. GREENBERG, AMBASSADOR HOTEL, 72 McDONNELL STREET, GUELPH, ONTARIO (RESPONDENT). (6 EMPLOYEES).

13859-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MCCOY CONSTRUCTION (HAMILTON) LTD. (RESPONDENT). (7 EMPLOYEES).

13879-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. LIVINGSTON EXCAVATING & HAULAGE (RESPONDENT). (17 EMPLOYEES).

13881-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. LIVINGSTON'S SAND & GRAVEL (RESPONDENT). (17 EMPLOYEES).

13884-67-R: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. PRECISION AUTOMOTIVE CO. LTD. (RESPONDENT). (64 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING NOVEMBER

13394-67-R: MARIO PARADISO (APPLICANT) V. THE HOTEL CLUBS, RESTAURANTS, TAVERNS EMPLOYEE UNION LOCAL 261 (RESPONDENT). (9 EMPLOYEES). (DISMISSED).

(RE: BRUCE MACDONALD MOTOR LODGE,  
BELLS CORNER.

(SEE INDEXED ENDORSEMENT PAGE 766 ).

13510-67-R: COLAROSSO, ALFONZO (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT) V. ZACHARY DE VUONO LIMITED (INTERMENER). (16 EMPLOYEES). (DISMISSED).

13512-67-R: GIACOMO LAPOSTA (APPLICANT) V. INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (RESPONDENT). (16 EMPLOYEES). (DISMISSED).

RE: MEDITERRANEAN CONSTRUCTION,  
TORONTO.

13758-67-R: RENOLD CHAINS MANUFACTURING LTD. (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (RESPONDENT). (15 EMPLOYEES). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 773 ).

13759-67-R: GEORGE MAHARAS (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 254 (RESPONDENT). (55 EMPLOYEES). (DISMISSED).

RE: DIANA SWEETS LIMITED,  
TORONTO.

13874-67-R: DEERFIELD PLASTICS LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (32 EMPLOYEES). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 778 ).

13875-67-R: DEERFIELD LAMINATIONS LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (21 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING NOVEMBER

13712-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. NATIONAL CONCRETE PRODUCTS LIMITED (RESPONDENT) V. LOCAL UNION 1596, CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 780 ).

13713-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. NATIONAL SEWER PIPE LIMITED (RESPONDENT) V. LOCAL UNION 1596, CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 781 ).

13753-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. NATIONAL SEWER PIPE LIMITED (RESPONDENT) V. HAMILTON GENERAL WORKERS UNION, LOCAL 202, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 783).

13896-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 506 (APPLICANT) V. THE CONTRACTING PLASTERERS' ASSOCIATION OF TORONTO (RESPONDENT) V. THE PLASTERERS' LABOURERS UNION, LOCAL 781, OF TORONTO (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING  
NOVEMBER

13520-67-U: THE HYDRO-ELECTRIC COMMISSION OF THE BOROUGH OF ETOBICOKE (APPLICANT) V. LOCAL 636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENT). (WITHDRAWN).

13818-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. D. BONNEVILLE, R. BRISSON, G. CUSSON, L. CULLETON, J. DAIGLE, O. DIOTTE, J. DRYDEN, G. FITZPATRICK, J. FRAPPIER, L. GAGNON, A. GALLANT, R. GALLANT, J. GRIBBONS, R. LEMIEUS, A. MACNEIL, C. MAHON, C. MAURICE, R. MAURICE, R. MEUNIER, J. ROY, (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

13608-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (APPLICANT) V. PRECISION AUTOMOTIVE CO. LTD. (RESPONDENT). (WITHDRAWN).

13819-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. J. ROY (RESPONDENT). (WITHDRAWN).

13820-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. R. MEUNIER (RESPONDENT). (WITHDRAWN).

13821-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. R. MAURICE (RESPONDENT). (WITHDRAWN).

13822-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. C. MAURICE (RESPONDENT). (WITHDRAWN).

13823-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. C. MAHON (RESPONDENT). (WITHDRAWN).

13824-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. A. MACNEIL (RESPONDENT). (WITHDRAWN).

13825-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. R. LEMIEUX  
(RESPONDENT). (WITHDRAWN).

13826-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. J. GRIBBONS  
(RESPONDENT). (WITHDRAWN).

13827-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. R. GALLANT  
(RESPONDENT). (WITHDRAWN).

13828-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. L. GAGNON  
(RESPONDENT). (WITHDRAWN).

13829-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. A. GALLANT  
(RESPONDENT). (WITHDRAWN).

13830-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. J. FRAPPIER  
(RESPONDENT). (WITHDRAWN).

13831-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. G. FITZPATRICK  
(RESPONDENT). (WITHDRAWN).

13832-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. J. DRYDEN (RESPONDENT).  
(WITHDRAWN).

13833-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. O. DIOTTE (RESPONDENT).  
(WITHDRAWN).

13834-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. J. DAIGLE (RESPONDENT).  
(WITHDRAWN).

13835-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. L. CULLERON  
(RESPONDENT). (WITHDRAWN).

13836-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. G. CUSSON (RESPONDENT).  
(WITHDRAWN).

13837-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. R. BRISSON  
(RESPONDENT). (WITHDRAWN).

13838-67-U: CECCHETTO & SONS LTD. (APPLICANT) V. D. BONNEVILLE  
(RESPONDENT). (WITHDRAWN).

13858-67-U: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. ELECTROHOME LIMITED,  
AND C. A. POLLOCK (RESPONDENT). (WITHDRAWN).

13903-67-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V.  
GRANITE CLUB LIMITED (RESPONDENT). (WITHDRAWN).



COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING  
NOVEMBER

13457-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. TOWN-SHIP OF WESTMINSTER (RESPONDENT). (WITHDRAWN).

13525-67-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT) V. ELITE BLOUSE & SKIRT MANUFACTURING LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 784 ).

13548-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ALLIED CONVEYORS LIMITED (RESPONDENT). (WITHDRAWN).

13583-67-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT) V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 786 ).

13724-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. CITY PARKING CANADA LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 787 ).

13740-67-U: GENERAL TRUCK DRIVERS UNION LOCAL 879 (COMPLAINANT) V. CITY PARKING CANADA LIMITED (RESPONDENT). (WITHDRAWN).

13751-67-U: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. TRIAD TRUCKWAYS LIMITED (RESPONDENT). (WITHDRAWN).

13802-67-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) V. DOREEN SHOES (RESPONDENT). (WITHDRAWN).

13814-67-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, 482 YORK STREET, LONDON, ONTARIO (COMPLAINANT) V. CENTRE GREY GENERAL HOSPITAL, MAIN STREET, MARKDALE, ONTARIO (RESPONDENT). (WITHDRAWN).

13815-67-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL.CIO.CLC. (COMPLAINANT) V. INTERCITY FOOD SERVICES LTD. (WITH RESTAURANT IN WINDSOR, ONT.) (RESPONDENT). (WITHDRAWN).

13839-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. TORONTO AUTO PARKS LIMITED (RESPONDENT). (WITHDRAWN).

13845-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT). (DISMISSED).

13850-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT). (DISMISSED).

13861-67-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS, EMPLOYEES' UNION, LOCAL 261 (COMPLAINANT) V. BEACON REALTY CO., LIMITED (RESPONDENT). (WITHDRAWN).

13902-67-U: JAMES SPEIRS (COMPLAINANT) V. A. M. WOOLFREY, OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN, TORONTO, BRITISH AMERICAN OIL CO. LTD. (OIL & CHEMICAL CO.) K.G. COOKE, HAMILTON, CANADIAN WESTINGHOUSE LTD. (ELECTRICAL INDUSTRY) L.G. KERR, DRYDEN, DRYDEN PAPER CO. LTD. (PULP & PAPER INDUSTRY) N. H. WAGE, COOPER CLIFF, INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER, HAMILTON, STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. LTD. (STEEL INDUSTRY) (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 789).

13927-67-U: LETITIA THORNTON (COMPLAINANT) V. CARRINGTON DISTILLERS (ONT) LTD. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

NOVEMBER

13592-67-M: CITY OF LONDON (APPLICANT) V. LOCAL #101, CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 791).

13677-67-M: OSHAWA PUBLIC LIBRARY BOARD, (McLAUGHLIN PUBLIC LIBRARY) (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 960 (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 793).

13725-67-M: THE UNITED STEELWORKERS OF AMERICA, ON BEHALF OF LOCAL 6571 (APPLICANT) V. LAKE ONTARIO STEEL COMPANY, LIMITED (RESPONDENT).

REFERENCES TO BOARD PURSUANT TO SECTION 79A

13186-67-M: DUPLATE CANADA LIMITED (EMPLOYER) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA LOCAL 222 (TRADE UNION).

(SEE INDEXED ENDORSEMENT PAGE 795).

13772-67-M: INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION, LOCAL 8 (TRADE UNION) V. RAINEE MANUFACTURING PRODUCTS LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 796).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13492-67-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT, AND GENERAL WORKERS (APPLICANT) V. R. E. LAW CRUSHED STONE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

13567-67-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CANADA CEMENT COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

13621-67-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CANADA CEMENT COMPANY, LIMITED (RESPONDENT). (REQUEST DENIED).

13638-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CORNWALL GRAVEL COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 797).

13641-67-R: NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL (APPLICANT) V. SISTERS OF ST. JOSEPH, ST. JOSEPH'S HOSPITAL, GUELPH, ONTARIO (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 798).

REQUEST FOR REVIEW OF BARGAINING UNIT

13549-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DOMINION ELECTRIC MANUFACTURING CO. LTD. (RESPONDENT) V. FEDERAL LABOUR UNION, LOCAL 24892, C.L.C. (PREDECESSOR TRADE UNION). (DISMISSED).

INDEXED ENDORSEMENTS - CERTIFICATION

12676-66-R: UNION OF NURSING ASSISTANTS (APPLICANT) V. ESSEX HEALTH ASSOCIATION (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL UNION #210 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: R. E. BURNELL, MRS. JOANNE VAN SICKLE, MRS. SUSAN DELCOL, MISS JUDY KROPIE AND MISS ROSE MARIE BENETEAU FOR THE APPLICANT, W. L. MCGREGOR, Q.C., GARNET PICKARD AND MRS. T. SILINSKY FOR THE RESPONDENT, MARTIN LEVINSON, A. HEARN AND A. BORG FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:  
NOVEMBER 8, 1967.

1. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL REGISTERED NURSING ASSISTANTS EMPLOYED BY THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT THE CHIEF HOUSEKEEPER AND PERSONS ABOVE THE RANK OF CHIEF HOUSEKEEPER. THE APPLICANT WAS RECOGNIZED FOR THE FIRST TIME BY THE BOARD ON FEBRUARY 21ST, 1967, IN THIS CASE, AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE INTERVENER, PURSUANT TO THE BOARD'S CERTIFICATE ISSUED IN 1948, REPRESENTS A UNIT OF EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING CLASSIFICATIONS:

KITCHEN AND CAFETERIA HELP	ORDERLIES
MAIDS	PAINTERS
WARD AIDES	GARDENERS
LINEN ROOM HELP	CARPENTERS
LAUNDRY HELP	CLEANERS
MAINTENANCE HELP	NURSES' AIDES

3. IN ADDITION TO REGISTERED NURSING ASSISTANTS, THE FOLLOWING CLASSIFICATIONS ARE AMONG THOSE NOT COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER:

ASSISTANT HEAD NURSES	DRIVER - TECHNICIAN
INHALATION THERAPIST	REGISTERED NURSES AND GRADUATES
WARD CLERKS	REGISTERED LABORATORY TECHNICIANS
NURSING INSTRUCTORS	LABORATORY ASSISTANTS
ASSISTANT PHARMACIST	LABORATORY AIDES
BIOCHEMIST	REGISTERED X-RAY TECHNICIANS
PHYSIOTHERAPIST	X-RAY DARK ROOM TECHNICIAN
OCCUPATIONAL THERAPY ASSISTANT	OCCUPATIONAL THERAPY AIDES
SOCIAL WORKER (M.S.W.)	WATCHMAN
SOCIAL WORKER	PLASTERER
SPEECH THERAPIST	CERTIFIED E.E.G. TECHNICIANS

4. THE APPLICANT'S GENERAL BY-LAW READS, IN PART, AS FOLLOWS:

SECTION THREE: OBJECTS

THE OBJECTS OF THIS UNION SHALL BE:

1. TO UNITE INTO ONE ORGANIZATION NURSING ASSISTANTS WHO ARE ELIGIBLE FOR MEMBERSHIP REGARDLESS OF RELIGION, RACE, CREED, COLOUR, NATIONALITY, ANCESTRY, PLACE OF ORIGIN, AGE OR SEX.

SECTION FOUR: ELIGIBILITY FOR MEMBERSHIP

ALL NURSING ASSISTANTS REGISTERED AS A NURSING ASSISTANT UNDER THE NURSES ACT 1961-62, A STATUTE



OF THE PROVINCE OF ONTARIO EMPLOYED BY AN EMPLOYER EITHER ON A FULL TIME OR ON A PART TIME BASIS EXCEPT IN A MANAGERIAL CAPACITY SHALL BE ELIGIBLE FOR MEMBERSHIP IN THIS UNION. ALL APPLICANTS FOR MEMBERSHIP SHALL COMPLY WITH AND BE SUBJECT TO THE REQUIREMENTS IMPOSED BY THESE BY-LAWS.

SECTION FIVE: MEMBERSHIP

AN APPLICANT SHALL BE CONSIDERED A MEMBER WHEN HE SHALL MEET ALL THE FOLLOWING REQUIREMENTS FOR MEMBERSHIP:

1. HE IS REGISTERED AS A NURSING ASSISTANT UNDER THE NURSES ACT 1961-62, A STATUTE OF THE PROVINCE OF ONTARIO AND SHALL HAVE PROVIDED PROOF THEREOF.

A MEMBER SHALL CEASE TO BE A MEMBER IN THE UNION WHEN HE CEASES TO BE A NURSING ASSISTANT REGISTERED UNDER THE NURSES ACT 1961-62, PROVINCE OF ONTARIO.

5. THE ISSUE TO BE DETERMINED IN THIS CASE IS WHETHER THE GROUP OF EMPLOYEES FOR WHOM THE APPLICANT SEEKS CERTIFICATION AS BARGAINING AGENT IS A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. IT IS THE APPLICANT'S POSITION THAT REGISTERED NURSING ASSISTANTS, BECAUSE OF THEIR SPECIAL TRAINING AND FUNCTIONS, SHARE A COMMUNITY OF INTEREST WITH REGISTERED AND GRADUATE NURSES. IT WAS ARGUED THAT THIS COMMUNITY OF INTEREST WAS RECOGNIZED BY THE LEGISLATURE IN THAT THE NURSES' ACT, STATUTES OF ONTARIO 1961-1962, CHAPTER 90, COVERS BOTH REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS. THE APPLICANT ARGUED THAT SINCE THE BOARD HAS FOUND UNITS OF REGISTERED AND GRADUATE NURSES TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, ACCORDINGLY, IF THE SAME PRINCIPLES ARE APPLIED BY THE BOARD IN THIS CASE, THE BOARD IN ITS DISCRETION SHOULD DETERMINE THAT A UNIT OF REGISTERED NURSING ASSISTANTS IS APPROPRIATE FOR COLLECTIVE BARGAINING.

6. IT WAS THE RESPONDENT'S AND THE INTERVENER'S POSITION THAT THE REGISTERED NURSING ASSISTANTS WORK WITH AND SHARE A COMMUNITY OF INTEREST WITH PERSONS CLASSIFIED AS UNREGISTERED NURSING ASSISTANTS, NURSES' AIDES, ORDERLIES, MALE ATTENDANTS, AND OTHERS.

7. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED SEPTEMBER 1ST, 1967 AND THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED SEPTEMBER 21ST, 1967, THE BOARD CONVENED A HEARING AT WINDSOR ON OCTOBER 2ND, 1967 TO HEAR THE REPRESENTATIONS OF THE PARTIES AS TO WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORTS. DURING THE COURSE OF THIS HEARING, THE BOARD ACCOMPANIED BY REPRESENTATIVES OF THE PARTIES, INSPECTED THE RESPONDENT'S HOSPITAL AND VIEWED THE WORK PERFORMED BY THE PERSONS IN QUESTION.

8. WHILE IT IS QUITE APPARENT FROM THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORTS AND THE EVIDENCE VIEWED BY THE BOARD DURING ITS INSPECTION OF THE HOSPITAL THAT THE REGISTERED NURSING ASSISTANTS SHARE A COMMUNITY OF INTEREST WITH REGISTERED AND GRADUATE NURSES, IT IS EQUALLY APPARENT THAT THEY ALSO SHARE A COMMUNITY OF INTEREST WITH OTHER HOSPITAL EMPLOYEES INCLUDING UNREGISTERED NURSING ASSISTANTS, NURSES' AIDES, ORDERLIES, MALE ATTENDANTS AND PSYCHIATRIC ATTENDANTS, AMONG OTHERS.

9. THE COMMUNITY OF INTEREST SHARED BY THESE VARIOUS CLASSIFICATIONS BECOMES APPARENT WHEN THE FOLLOWING CRITERIA IS CONSIDERED:

- (A) NATURE OF WORK PERFORMED -- IN THIS CASE REGISTERED NURSING ASSISTANTS PERFORM MANY OF THE SAME FUNCTIONS WHICH ARE PERFORMED BY THE OTHER CLASSIFICATIONS MENTIONED ABOVE;
- (B) CONDITIONS OF EMPLOYMENT -- SIMILAR WORKING CONDITIONS ARE ENJOYED BY ALL CLASSIFICATIONS;
- (C) SKILLS OF EMPLOYEES -- WHILE REGISTERED NURSING ASSISTANTS HAVE MORE SKILLS THAN SOME OF THE OTHER CLASSIFICATIONS, MANY OF THE SKILLS OF THE REGISTERED NURSING ASSISTANTS ARE SHARED BY THE OTHER CLASSIFICATIONS;
- (D) ADMINISTRATION -- ALL CLASSIFICATIONS REFERRED TO ABOVE ARE ADMINISTERED BY THE RESPONDENT IN THE SAME MANNER AND THERE IS A COMMON CHAIN OF SUPERVISION;
- (E) GEOGRAPHIC CIRCUMSTANCES -- THE EMPLOYEES IN ALL CLASSIFICATIONS WORK AT THE SAME HOSPITAL WHICH IS COMPOSED OF SEVERAL BUILDINGS AT THE SAME LOCATION;
- (F) FUNCTIONAL COHERENCE AND INTERDEPENDENCE -- THE EVIDENCE DISCLOSES THAT OFTEN THREE AND SOMETIMES FOUR OF THE ABOVE CLASSIFICATIONS PERFORM THEIR DUTIES WITH RESPECT TO THE SAME PATIENT AT THE SAME TIME. THERE IS REGULAR INTERMINGLING AMONG THE CLASSIFICATIONS IN THE PERFORMANCE OF THEIR WORK AND THEY SHARE A MUTUALITY OF INTEREST IN THEIR WORK SINCE ALL CLASSIFICATIONS ARE PRIMARILY CONCERNED WITH DIRECT PATIENT CARE.

10. IN ADDITION, IN THE SAME WAY AS THE CLASSIFICATIONS ENUMERATED ABOVE SHARE A COMMUNITY OF INTEREST, SUCH COMMUNITY OF INTEREST APPEARS TO BE SHARED BY OTHER HOSPITAL EMPLOYEES, E.G., PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SPEECH THERAPISTS, X-RAY TECHNICIANS, LAB TECHNICIANS, AMONG OTHERS. HOWEVER, THE PARTIES DID NOT DIRECT SUFFICIENT ATTENTION TO THIS AREA TO PERMIT THE BOARD TO REACH A DEFINITE CONCLUSION. THIS MUCH IS CERTAIN, HOWEVER, WHILE REGISTERED NURSING ASSISTANTS AS A CLASSIFICATION ARE DISTINGUISHABLE FOR THE PURPOSE OF IDENTIFICATION, THEY ARE NOT SEVERABLE FROM OTHER CLASSIFICATIONS BY REASON OF COMMUNITY OF INTEREST.

11. AS STATED ABOVE, THE APPLICANT ALSO ARGUED THAT REGISTERED NURSING ASSISTANTS ARE ENTITLED TO BE CONSIDERED AS AN APPROPRIATE BARGAINING UNIT FOR REASONS SIMILAR TO THOSE APPLIED BY THE BOARD IN DETERMINING THAT UNITS OF REGISTERED AND GRADUATE NURSES ARE APPROPRIATE FOR COLLECTIVE BARGAINING. IN SUPPORT OF THIS ARGUMENT, THE APPLICANT POINTED OUT THAT NOT ONLY ARE REGISTERED NURSING ASSISTANTS AND REGISTERED AND GRADUATE NURSES COVERED BY THE NURSES' ACT BUT THEIR FUNCTIONS IN THE HOSPITAL ARE VERY SIMILAR AS THE NAME OF THEIR CLASSIFICATION IMPLIES.

12. HISTORICALLY, REGISTERED AND GRADUATE NURSES HAVE NEVER BEEN INCLUDED IN BARGAINING UNITS WITH OTHER EMPLOYEES (EXCEPT IN ONE OR TWO INSTANCES WHERE THEY WERE INCLUDED BY AGREEMENT OF THE PARTIES). THE REGISTERED NURSES' ASSOCIATION, WHILE IT HAS NOT BEEN RECOGNIZED AS A TRADE UNION, APPEARED TO SATISFY THE NEEDS OF REGISTERED AND GRADUATE NURSES WITHOUT THE BENEFITS OF COLLECTIVE BARGAINING UNDER THE ACT. THE BOARD GAVE EFFECT TO THE HISTORY OF SEPARATION OF REGISTERED AND GRADUATE NURSES FROM OTHER HOSPITAL EMPLOYEES, WHICH DISTINGUISHED THE REGISTERED AND GRADUATE NURSES FROM EMPLOYEES WHO HAD HISTORICALLY BARGAINED COLLECTIVELY.

13. WHILE REGISTERED AND GRADUATE NURSES HAD BARGAINED SEPARATELY AND APART FROM OTHER HOSPITAL EMPLOYEES, THROUGH THE AGENCY OF THE REGISTERED NURSES' ASSOCIATION, TO IMPROVE THEIR WORKING CONDITIONS, IT IS ONLY IN RECENT TIMES, HOWEVER, THAT SUCH SEPARATE BARGAINING HAS BEEN UNDER THE AUTHORITY AND PURSUANT TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. IN ADDITION, BY REASON OF THEIR SPECIAL SKILLS, WHICH ARE SHARED BY ALL REGISTERED AND GRADUATE NURSES, THEY ARE DISTINGUISHABLE FROM OTHER HOSPITAL EMPLOYEES. BY ANALOGY TO THE PROVISIONS OF SECTION 6(2) OF THE ACT AND THEIR HISTORY OF EXCLUSION FROM HOSPITAL BARGAINING UNITS, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE ACT, FOUND UNITS OF REGISTERED AND GRADUATE NURSES TO BE APPROPRIATE FOR COLLECTIVE BARGAINING.

14. THE REGISTERED NURSING ASSISTANTS, HOWEVER, HAVE A DIFFERENT HISTORY. FROM THE EVIDENCE BEFORE US, IT WOULD APPEAR THAT THE CLASSIFICATION OF CERTIFIED NURSING ASSISTANTS FIRST RECEIVED RECOGNITION DURING THE 1940'S. AS THE NATURE AND QUALITY OF TRAINING DEVELOPED AND IMPROVED, THE CLASSIFICATION OF CERTIFIED NURSING ASSISTANTS BECAME KNOWN AS REGISTERED NURSING ASSISTANTS. THE REGISTERED NURSING ASSISTANTS WERE CONSISTENTLY INCLUDED IN BARGAINING UNITS REPRESENTED BY THE INTERVENER UNION SINCE 1951 WHEN THE BOARD COMMENCED DESCRIBING UNITS ON AN "INDUSTRIAL" OR "ALL EMPLOYEE" BASIS. IT HAS BEEN PART OF THE BOARD'S REGULAR PRACTICE TO INCLUDE REGISTERED NURSING ASSISTANTS (FORMERLY CERTIFIED NURSING ASSISTANTS) IN "ALL EMPLOYEE" HOSPITAL BARGAINING UNITS SINCE 1951.

15. THE APPLICANT ARGUED THAT REGISTERED NURSING ASSISTANTS SHARE A GREATER COMMUNITY OF INTEREST WITH NURSES THAN WITH OTHER HOSPITAL EMPLOYEES. THIS ARGUMENT WAS DEALT WITH BY THE BOARD IN AN APPLICATION

BY CANADIAN UNION OF PUBLIC EMPLOYEES FOR A UNIT WHICH INCLUDED REGISTERED NURSING ASSISTANTS IN THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT CASE O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 34, AND IN AN APPLICATION BY NURSES' ASSOCIATION YORK COUNTY HEALTH UNIT FOR A UNIT OF REGISTERED AND GRADUATE NURSES IN THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 62. IN THOSE CASES, THE BOARD STATED ITS POSITION AT P. 63 AS FOLLOWS:

THE APPLICANT STATED THAT IT ORGANIZED ITSELF TO REPRESENT REGISTERED AND GRADUATE NURSES ONLY, HAVING REGARD TO THE BOARD'S HISTORY OF EXCLUDING THESE CLASSIFICATIONS FROM BARGAINING UNITS. IN ADDITION, THE APPLICANT DID NOT CONSIDER TAKING INTO MEMBERSHIP REGISTERED NURSING ASSISTANTS BECAUSE OF THE BOARD'S HISTORY OF INCLUDING REGISTERED NURSING ASSISTANTS IN BARGAINING UNITS WITH OTHER EMPLOYEES. IT IS TO BE NOTED THAT THE USUAL HOSPITAL BARGAINING UNIT INCLUDES REGISTERED NURSING ASSISTANTS BUT EXCLUDES NURSES.

IF THE BOARD WERE TO ACCEDE TO THE RESPONDENT'S REQUEST IN THIS CASE THE BOARD WOULD HAVE TO FIND THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES, WHICH SEEKS TO REPRESENT REGISTERED NURSING ASSISTANTS AND HAD A HISTORY OF REPRESENTING THEM, IS NO LONGER ENTITLED TO DO SO, AND, IN ADDITION, IF THE BOARD AGREED WITH THE RESPONDENT'S POSITION THE BOARD WOULD HAVE TO FIND THAT THE APPLICANT IN THE INSTANT CASE WOULD BE COMPELLED TO REPRESENT REGISTERED NURSING ASSISTANTS EVEN THOUGH IT DOES NOT DESIRE TO DO SO AND ITS CONSTITUTION DOES NOT PROVIDE FOR THEIR ADMITTANCE TO MEMBERSHIP.

HAVING REGARD TO THE FACT THAT THE APPLICANT'S CONSTITUTION WAS PREPARED IN LIGHT OF THE BOARD'S PRACTICE OF INCLUDING REGISTERED NURSING ASSISTANTS IN BARGAINING UNITS WITH OTHER EMPLOYEES, AND THE FACT THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES HAS A LONG HISTORY OF REPRESENTING THAT CLASSIFICATION, THE BOARD IS NOT PREPARED IN THIS CASE TO COMPEL THE APPLICANT TO TAKE REGISTERED NURSING ASSISTANTS INTO MEMBERSHIP. WHILE IT MAY BE THAT IF THE BOARD WERE FACED FOR THE FIRST TIME WITH THE PROBLEM OF DETERMINING THE APPROPRIATE BARGAINING UNIT FOR REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS, IT MIGHT WELL DECIDE THAT EMPLOYEES WHO ARE CONCERNED WITH DIRECT PATIENT CARE WOULD SHARE A COMMUNITY OF INTEREST WHICH WOULD ENTITLE THEM TO BE BARGAINED FOR IN THE SAME BARGAINING UNIT. MOREOVER,



IT MUST BE RECOGNIZED THAT IN ADDITION TO NURSES AND REGISTERED NURSING ASSISTANTS THERE ARE OTHER EMPLOYEES CONCERNED WITH DIRECT PATIENT CARE SUCH AS ORDERLIES, NURSING ASSISTANTS WHO ARE NOT REGISTERED, AND OTHER CLASSIFICATIONS. HOWEVER, THE BOARD IS NOT PREPARED TO DISREGARD ITS LONG HISTORY OF INCLUDING REGISTERED NURSING ASSISTANTS IN BARGAINING UNITS WITH OTHER EMPLOYEES AND APART FROM ANY OTHER CONSIDERATION, THIS HISTORY OF BARGAINING HAS DEVELOPED THE COMMUNITY OF INTEREST WHICH EXISTED BETWEEN THE REGISTERED NURSING ASSISTANTS AND OTHER HOSPITAL EMPLOYEES. IN ADDITION, THE BOARD IS NOT PREPARED TO FIND, ON THE EVIDENCE OF THIS CASE, THAT THE REGISTERED NURSING ASSISTANTS' FUNCTIONS ARE SUBSTANTIALLY DIFFERENT FROM THE FUNCTIONS PERFORMED BY THEM IN A HOSPITAL, AND, ACCORDINGLY, THE COMMUNITY OF INTEREST OF THE REGISTERED NURSING ASSISTANTS IN THIS CASE MUST BE DETERMINED HAVING REGARD TO THE LONG HISTORY OF THEIR INCLUSION IN "ALL EMPLOYEE" BARGAINING UNITS FOR HOSPITALS, AND THE HISTORY OF REPRESENTATION OF REGISTERED NURSING ASSISTANTS BY THE CANADIAN UNION OF PUBLIC EMPLOYEES IN SUCH "ALL EMPLOYEE" BARGAINING UNITS.

16. ACADEMIC ATTAINMENT AND THE EXERCISE OF SPECIAL SKILLS ARE NOT SUFFICIENT IN THEMSELVES TO CAUSE THE BOARD TO SEPARATE THE PERSONS WHO EXERCISE SPECIAL SKILLS FROM BARGAINING UNITS WHICH INCLUDE OTHER EMPLOYEES. OF GREATER IMPORTANCE IS THE MANNER IN WHICH THE SKILLS ARE EXERCISED. IF THE SPECIAL SKILLS ARE EXERCISED IN CONJUNCTION WITH PERSONS IN OTHER CLASSIFICATIONS WHO EXERCISE RELATED SKILLS OR AS PART OF A TEAM, WHICH INCLUDES OTHER CLASSIFICATIONS, SUCH INTERDEPENDENCE IS OF GREATER IMPORTANCE THAN THE MERE NATURE OF THE SKILLS. THERE ARE OTHER CLASSIFICATIONS IN ADDITION TO REGISTERED NURSING ASSISTANTS WHO WOULD BE ELIGIBLE FOR INCLUSION IN "ALL EMPLOYEE" HOSPITAL BARGAINING UNITS IN ACCORDANCE WITH THE BOARD'S PRESENT PRACTICE. A TAG-END UNIT TO THE BARGAINING UNIT REPRESENTED BY THE INTERVENER WOULD INCLUDE ALL OTHER SUCH CLASSIFICATIONS.

17. THE APPLICANT'S MEMBERSHIP, HOWEVER, IS RESTRICTED TO REGISTERED NURSING ASSISTANTS. THE APPLICANT DOES NOT WISH NOT IS IT ABLE TO TAKE INTO MEMBERSHIP PERSONS OTHER THAN REGISTERED NURSING ASSISTANTS. IN THIS CASE, THERE IS A CONSTITUTIONAL PROHIBITION WHICH PRECLUDES THE ADMITTANCE INTO MEMBERSHIP OF PERSONS WHO WOULD BE INCLUDED IN THE TAG-END UNIT. WHERE THERE IS A CONSTITUTIONAL PROHIBITION AGAINST THE ADMITTANCE INTO MEMBERSHIP OF AN EMPLOYEE REPRESENTED BY THE UNION, THE CONSTITUTIONAL PROHIBITION WOULD DEPRIVE THE UNION OF THE RIGHT TO REPRESENT THE BARGAINING UNIT IN WHICH THE PERSONS IS EMPLOYED. IN THIS REGARD, SEE GAYMER & OULTRAM CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17,073, C.L.S. 76-429. IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, BOARD FILE NO. 12779-66-R THE BOARD IN ITS DECISION OF AUGUST 29TH, 1967 STATED IN PART AS FOLLOWS:

"...A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES."

18. IN THE INSTANT CASE, THE APPLICANT CANNOT QUALIFY UNDER SECTION 6(2) OF THE ACT FOR CRAFT STATUS SINCE THERE IS NO HISTORY IN ACCORDANCE WITH ESTABLISHED TRADE UNION PRACTICE OF REPRESENTING REGISTERED NURSING ASSISTANTS AS A CRAFT UNIT. THE HISTORY WITH RESPECT TO REGISTERED NURSING ASSISTANTS IS THAT THIS CLASSIFICATION HAS BEEN REPRESENTED BY OTHER TRADE UNIONS IN BARGAINING UNITS WHICH INCLUDE OTHER CLASSIFICATIONS.

19. WE MUST THEREFORE DETERMINE, PURSUANT TO SECTION 6(1) OF THE ACT, WHETHER THE UNIT APPLIED FOR BY THE APPLICANT IS APPROPRIATE. SINCE THE REGISTERED NURSING ASSISTANTS SHARE A COMMUNITY OF INTEREST WITH OTHER EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE INTERVENER, A "TAG-END" UNIT TO THE INTERVENER'S BARGAINING UNIT WOULD BE APPROPRIATE. HOWEVER, SUCH TAG-END UNIT WOULD INCLUDE PERSONS OTHER THAN REGISTERED NURSING ASSISTANTS, AND THE APPLICANT IS PRECLUDED BY ITS GENERAL BY-LAW FROM TAKING SUCH PERSONS INTO MEMBERSHIP, AND, ACCORDINGLY, IS NOT ELIGIBLE TO BE CERTIFIED FOR A TAG-END UNIT. BECAUSE OF THE COMMUNITY OF INTEREST SHARED BY THE REGISTERED NURSING ASSISTANTS WITH OTHER HOSPITAL EMPLOYEES AND BECAUSE OF THE HISTORY OF INCLUDING REGISTERED NURSING ASSISTANTS IN BARGAINING UNITS WITH OTHER HOSPITAL EMPLOYEES, THE BOARD IN THIS CASE IS NOT DISPOSED TO FIND THAT REGISTERED NURSING ASSISTANTS CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

20. FOR THE FOREGOING REASONS, THE BOARD FINDS THAT BECAUSE THE APPLICANT IS UNABLE OR UNWILLING TO REPRESENT ANY BARGAINING UNIT WHICH THE BOARD WOULD FIND TO BE APPROPRIATE IN THIS MATTER, THIS APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN:

NOVEMBER 8, 1967.

1. WHILE I AM OBLIGED TO CONCUR IN THE BOARD'S DECISION BECAUSE OF THE HISTORY OF COLLECTIVE BARGAINING IN HOSPITALS AND THE BOARD'S PRACTICE IN DETERMINING THE APPROPRIATE BARGAINING UNITS IN RESPECT THERETO, I DO SO MOST RELUCTANTLY IN VIEW OF THE SPECIAL CIRCUMSTANCES OF THIS CASE AND PARTICULARLY BECAUSE OF THE INTERVENTION BY THE INTERVENER, BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL UNION #210.

2. ALTHOUGH THE INTERVENER HAS HAD EVERY OPPORTUNITY TO ORGANIZE THE REGISTERED NURSING ASSISTANTS SINCE THE TIME THEY WERE FIRST EMPLOYED BY THE HOSPITAL, IT HAS FAILED TO DO SO. MOREOVER, IT DID NOT FILE EVIDENCE OF OR CLAIM EVEN ONE OF THE 66 REGISTERED NURSING ASSISTANTS AS A MEMBER. NEVERTHELESS, THE INTERVENER SAW FIT TO ACTIVELY AND STRENUOUSLY OPPOSE THE APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT UNION IN ITS ATTEMPT TO PROVIDE COLLECTIVE BARGAINING TO THIS GROUP OF EMPLOYEES.

3. THE REGISTERED NURSING ASSISTANTS INDEPENDENTLY FORMED THEIR OWN LABOUR ORGANIZATION, UNION OF NURSING ASSISTANTS, WHICH THE BOARD FOUND TO BE A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. EVIDENCE OF MEMBERSHIP IN THE APPLICANT UNION FILED WITH THE BOARD DEMONSTRATED OVERWHELMINGLY (81.8%) THAT THESE EMPLOYEES WISHED TO BE REPRESENTED BY THEIR OWN UNION. I AM BOTH SURPRISED AND SHOCKED THAT THE INTERVENER, WHICH PRESUMABLY IS A STAUNCH SUPPORTER OF THE PRINCIPLES AND GROWTH OF THE COLLECTIVE BARGAINING PROCESS, WOULD EMPLOY COUNSEL AND USE EVERY MEANS AT ITS DISPOSAL TO SECURE THE DISMISSAL OF THIS APPLICATION IN ALL THE CIRCUMSTANCES SET OUT ABOVE.

13167-67-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101  
(APPLICANT) V. WARNER-LAMBERT CANADA LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: ANDRE BEKERMAN FOR THE APPLICANT,  
AND J. V. CUFF AND W. G. WINFIELD FOR THE RESPONDENT.

DECISION OF J.F.W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER  
P.J. O'KEEFE: NOVEMBER 27, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE APPLICANT APPLIES FOR A UNIT OF STATIONARY ENGINEERS AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT AT 2200 EGLINTON AVENUE EAST IN METROPOLITAN TORONTO. THE RESPONDENT SUGGEST THAT THE APPROPRIATE UNIT CONSISTS OF STATIONARY ENGINEERS AND HELPERS IN ITS BOILER ROOMS IN METROPOLITAN TORONTO.

2. THE RESPONDENT HAS TWO PLANTS IN METROPOLITAN TORONTO, ONE AT 2200 EGLINTON AVENUE EAST, THE OTHER AT 40 BERTRAND AVENUE, AND THERE IS A BOILER ROOM IN EACH PLANT MANNED BY A STAFF OF STATIONARY ENGINEERS. THE TWO PLANTS ARE BUT A SHORT DISTANCE FROM EACH OTHER, AND IT WAS THE RESPONDENT'S CONTENTION THAT THE RELATIONSHIP BETWEEN THE TWO PLANTS AND THE TWO GROUPS OF BOILER ROOM EMPLOYEES WAS SUCH THAT STATIONARY ENGINEERS IN THE TWO PLANTS OUGHT TO CONSTITUTE A SINGLE UNIT OF EMPLOYEES FOR PURPOSES OF COLLECTIVE BARGAINING. THE EXAMINER'S REPORT SETS OUT THE EVIDENCE ADDUCED BY THE PARTIES RELATING TO THIS ISSUE.

3. WHERE AN EMPLOYER CONDUCTS ITS OPERATIONS AT MORE THAN ONE LOCATION IN A GIVEN GEOGRAPHICAL AREA, IT HAS BEEN THE BOARD'S USUAL PRACTICE TO DETERMINE THAT EMPLOYEES AT A SINGLE LOCATION CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING. THERE ARE, HOWEVER, EXCEPTIONS TO THIS GENERAL PRACTICE. IN CERTAIN TYPES OF BUSINESSES, FOR EXAMPLE, RETAIL CHAIN STORES, THE BOARD HAS DETERMINED THAT EMPLOYEES AT ALL LOCATIONS WITHIN THE AREA COME WITHIN A SINGLE APPROPRIATE UNIT.

AGAIN, IN A PARTICULAR CASE, IT MAY BE DETERMINED THAT THE BUSINESS OF AN EMPLOYER, ALTHOUGH CARRIED ON AT MORE THAN ONE LOCATION, CONSTITUTES A SINGLE INTEGRATED OPERATION. SEE, FOR EXAMPLE, THE USARCO LIMITED CASE, BOARD FILE NO. 13029-67-R.

4. THE EVIDENCE SET FORTH IN THE EXAMINER'S REPORT IN THE INSTANT CASE DOES NOT SATISFY US THAT THE RESPONDENT'S BUSINESS, AS CARRIED ON AT THE LOCATIONS DESCRIBED ABOVE, CONSTITUTES AN INTEGRATED OPERATION, PARTICULARLY WITH RESPECT TO THE BOILER ROOM OPERATIONS.

5. IN CASES OF UNITS OF STATIONARY ENGINEERS EMPLOYED IN BOILER ROOMS, IT HAD BEEN THE BOARD'S POLICY TO DETERMINE THE APPROPRIATE BARGAINING UNIT ON AN INDIVIDUAL BASIS, EVEN IN CASES OF EMPLOYERS WHOSE EMPLOYEES OPERATE BOILER ROOMS IN A NUMBER OF LOCATIONS IN A GEOGRAPHICAL AREA. IT IS NO DOUBT ON THE BASIS OF THIS POLICY THAT THE TRADE UNION'S ORGANIZATIONAL CAMPAIGNS ARE CARRIED ON. IT WOULD, IN OUR VIEW, BE UNFAIR TO ALTER THAT POLICY IN THE INSTANT CASE UNLESS IT WERE CLEARLY SHOWN THAT THE RESPONDENT'S BOILER ROOM OPERATIONS WERE INTEGRATED IN THE FULLEST SENSE. THE EVIDENCE IN THE INSTANT CASE DOES NOT SUPPORT THAT CONCLUSION.

6. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (j) OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT AT 2200 EGLINTON AVENUE EAST IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 2ND, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (j) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

NOVEMBER 27, 1967.

I DISSENT.

IN MY OPINION, IN THE CIRCUMSTANCES OF THIS CASE, WHERE THE TWO PLANTS OPERATED BY THE EMPLOYER ARE IN SUCH CLOSE PROXIMITY, I WOULD HAVE FOUND THAT THE APPROPRIATE BARGAINING UNIT CONSISTS OF STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOMS AT ITS PLANTS AT 2200 EGLINTON AVENUE EAST AND AT 40 BERTRAND AVENUE. THESE PLANTS ARE APPROXIMATELY ONE CITY BLOCK APART.



13398-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS,  
AFL, CIO, CLC (APPLICANT) V. CANADA CATERING CO. LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: IAN SCOTT, AL. KNIPFEL AND HAROLD WOOLLEY  
FOR THE APPLICANT, AND KEITH B. McMILLAN, KENNETH W. MUNRO AND  
CLARENCE T. WRIGHT FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H.F. IRWIN:  
NOVEMBER 8, 1967.

. . .

2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS  
THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS OPERATIONS AT  
PHILLIPS CABLES LIMITED, AUTOMATIC ELECTIC (CANADA) LIMITED AND PARKE  
DAVIS & COMPANY LIMITED AT BROCKVILLE, AND BROCKVILLE CHEMICALS LTD.  
AT MAITLAND, SAVE AND EXCEPT MANAGERS, MANAGERESSES, PERSONS ABOVE THE  
RANK OF MANAGER OR MANAGERESS, AND VENDING SUPERVISOR, CONSTITUTE A UNIT  
OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE  
EXAMINER HEREIN DATED THE 22ND DAY OF SEPTEMBER, 1967, AND THE WRITTEN  
SUBMISSIONS OF THE PARTIES, THE BOARD FINDS THAT KATHLEEN BOULTON,  
MOLLY BROWN, FRANCES McCALLUM AND LILA YOUNG, CLASSIFIED AS MANAGERESSES,  
AND KEITH BROWN, CLASSIFIED AS VENDING SUPERVISOR, EXERCISE MANAGERIAL  
FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS  
ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE  
IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT  
IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE  
MEMBERS OF THE APPLICANT ON AUGUST 16TH, 1967, THE TERMINAL DATE FIXED  
FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER  
SECTION 77 (2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE  
PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER O. HODGES: NOVEMBER 8, 1967.

I DISSENT IN THE MATTER OF EXCLUDING THE "MANAGERESS" IN EACH  
OF THE SEVERAL LOCATIONS WHERE THE UNION HAS MEMBERS.

I WOULD HAVE INCLUDED SUCH PERSONS IN THE BARGAINING UNIT AND  
ESTABLISHED "MANAGER" AS THE FIRST LEVEL OF MANAGEMENT.

13492-67-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT, AND GENERAL WORKERS (APPLICANT) v. R.E. LAW CRUSHED STONE LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: NOVEMBER 15, 1967.

1. THE APPLICANT APPLIED TO THE BOARD ON AUGUST 10TH, 1967, TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE TERMINAL DATE FIXED BY THE BOARD FOR THE APPLICATION WAS AUGUST 17TH, 1967.

2. BY REGISTERED LETTTER DATED AUGUST 15TH, 1967, THE LAW FIRM OF DAVIES AND EBERT OF PORT COLBORNE FILED WITH THE BOARD TWO UNDATED STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION. THE HEADING ON BOTH STATEMENTS IS IDENTICAL. ONE OF THE STATEMENTS (HEREAFTER REFERRED TO AS PETITION #1) BEARS THE SIGNATURES OF 16 PERSONS PURPORTING TO BE LEAD HEANDS IN THE EMPLOY OF THE RESPONDENT. THE SECOND STATEMENT (HEREAFTER REFERRED TO AS PETITION #2) BEARS THE SIGNATURES OF A TOTAL OF 64 PERSONS PURPORTING TO BE LABOURERS IN THE EMPLOY OF THE RESPONDENT. THE APPLICANT BY LETTER DATED AUGUST 16TH, 1967 WAS ADVISED BY THE REGISTRAR OF THE FILING OF THE TWO PETITIONS.

3. THE APPLICATION WAS HEARD BY THE BOARD ON AUGUST 24TH, 1967. AT THE HEARING THE BOARD ENTERTAINED THE REPRESENTATIONS OF THE PARTIES WITH REGARD TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT AND THE RESPONDENT. DURING THE DISCUSSION OF THE BARGAINING UNIT WHICH ENSUED REFERENCE WAS MADE TO LEAD HANDS. NO SUGGESTION WAS MADE BY THE APPLICANT THAT LEAD HANDS SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. RATHER THE PARTIES AGREED THAT THE LINE OF MANAGEMENT WAS "FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN". THE BOARD RESERVED ITS DECISION ON THE QUESTION OF THE APPROPRIATE BARGAINING UNIT.

4. THE BOARD AT THIS POINT IN THE PROCEEDING INFORMED THE PARTIES AS TO THE NUMBER OF EMPLOYEES ON THE LIST FILED BY THE RESPONDENT. AFTER REMOVING THE NAMES OF THE PERSONS ON SCHEDULE C WHO WERE ON INDEFINITE LAY-OFF AS OF THE DATE OF APPLICATION THERE APPEARED TO BE A LIST OF 105 TO 107 NAMES. THIS LIST WAS SUBJECT TO VARIATION DEPENDING BOTH ON THE DISPOSITION OF A NUMBER OF COMPLAINTS MADE BY THE APPLICANT PURSUANT TO SECTION 65 OF THE ACT AND ON THE BARGAINING UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE. THE APPLICANT FILED FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, OVER THE SIGNATURE OF DON NICHOLSON, THE REPRESENTATIVE OF THE APPLICANT WHO APPEARED ON BEHALF OF THE APPLICANT AT THE HEARING. THE FORM 8 WAS SUBMITTED IN SUPPORT OF THE EVIDENCE OF MEMBERSHIP FOR 65 PERSONS FILED BY THE APPLICANT. IN ITS FORM 8 THE APPLICANT STATED THAT THERE WERE 108 PERSONS WHO WERE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT THAT

THE APPLICANT CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING ON THE DATE OF THE MAKING OF THE APPLICATION. OF THE 65 PERSONS ON WHOSE BEHALF THE APPLICANT FILED EVIDENCE OF MEMBERSHIP, 59 OR 60 NAMES CORRESPONDED WITH NAMES APPEARING ON THE RESPONDENT'S LIST DEPENDING ON WHETHER THE LIST WAS 105 OR 107. IN EITHER CASE, THE APPLICANT HAD EVIDENCE OF MEMBERSHIP FOR ONE MORE PERSON THAN IT REQUIRED TO ENTITLE THE UNION TO OUTRIGHT CERTIFICATION. THE PETITIONS, HOWEVER, BORE THE NAMES OF 34 PERSONS CLAIMED IN MEMBERSHIP BY THE APPLICANT. IF THE BOARD WERE TO GIVE WEIGHT TO THE PETITIONS IT WOULD REDUCE THE UNDISPUTED EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT BELOW THE FIFTY-FIVE PER CENT NEEDED FOR OUTRIGHT CERTIFICATION.

5. ALTHOUGH THE BOARD AT THE HEARING COULD NOT ESTABLISH WITH COMPLETE CERTAINTY THAT THE APPLICANT HAD SUFFICIENT EVIDENCE OF MEMBERSHIP TO ENTITLE IT TO OUTRIGHT CERTIFICATION, THIS APPEARED TO BE THE CASE, AND BECAUSE OF THE "OVERLAP" THE PETITIONS WERE RELEVANT. ALL INTERESTED PARTIES TO THE PROCEEDING HAD COME FROM PORT COLBORNE TO TORONTO AND WERE IN ATTENDANCE AT THE HEARING. ACCORDINGLY, THE BOARD DEEMED IT ADVISABLE TO PROCEED WITH ITS USUAL INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITIONS AT THE HEARING. BRIEFLY, THE RELEVANT EVIDENCE RELATING TO THE ORIGINATION AND PREPARATION OF THE PETITIONS IS AS FOLLOWS. HAVING SEEN THE FORM 5, THE NOTICE TO EMPLOYEES OF THE APPLICATION WHICH WAS POSTED BY THE RESPONDENT ON FRIDAY, AUGUST 11TH, FIVE EMPLOYEES JAMES BEACH, JOHN BENNER, DONALD DAYBOLL, BRUCE MCKNIGHT AND ARTHUR STORM BY PRIOR ARRANGEMENT MET AT THE QUARRY ON THE MORNING OF SATURDAY, AUGUST 12TH. THE LATTER THREE EMPLOYEES CLASSIFY THEMSELVES AS LEAD HANDS AND ARE SO CLASSIFIED BY THE RESPONDENT ON THE LIST FILED WITH THE BOARD. ALL FIVE THEREUPON ATTENDED AT THE OFFICE OF WM. R. EBERT AT 10:15 A.M. THIS APPOINTMENT WAS ARRANGED BY BEACH THROUGH EBERT'S SECRETARY WHOM BEACH HAD KNOWN FOR SOME YEARS. ON THIS OCCASION EBERT PREPARED THE TWO PETITIONS, ONE FOR LEAD HANDS AND THE OTHER FOR THE REGULAR LABOURERS. THE FIVE EMPLOYEES RETURNED TO THE QUARRY WITH THE PETITIONS THE SAME MORNING AND HAD A SHORT CONFERENCE REGARDING THE MANNER IN WHICH THE PETITIONS WOULD BE CIRCULATED. THIS DISCUSSION TOOK PLACE IN ONE OF THE ROOMS IN THE OFFICE OF THE RESPONDENT AT THE QUARRY WHERE DAYBOLL HAD A DESK. SATURDAY WAS NOT A REGULAR WORKING DAY, AND ONLY A FEW EMPLOYEES WERE AT THE QUARRY ON THAT DAY. ACCORDING TO THE EVIDENCE NO MEMBERS OF MANAGEMENT WERE IN THE AREA WHEN THE FIVE MEN MET AT THE QUARRY IN THE MORNING OR WHEN THEY RETURNED AND BRIEFLY UTILIZED THE OFFICE.

6. THE EVIDENCE CONCERNING THE CIRCULATION OF THE PETITIONS IS THAT AFTER THE THREE LEAD HANDS PLACED THEIR SIGNATURES ON PETITION #1 STORM TOOK THE PETITION TO THE HOMES OF OTHER LEAD HANDS AND SECURED THE NEXT TEN SIGNATURES. MCKNIGHT GOT THE PETITION FROM HIM LATER THAT SAME AFTERNOON AND SECURED THE REMAINING SIGNATURES ON PETITION #1. BEACH GOT THE PETITION FROM MCKNIGHT AT HIS HOME IN THE EVENING OF MONDAY, AUGUST 14TH. BEACH AND BENNER, MEANWHILE AFTER



LEAVING THE QUARRY ON SATURDAY MORNING, WENT TO BEACH'S HOME. BETWEEN THE TWO OF THEM THEY TELEPHONED AS MANY OF THE EMPLOYEES AS POSSIBLE AND ASKED THEM TO MEET AT 7:00 P.M. THAT EVENING AT THE ROOM AT THE QUARRY WHICH WAS USED BY THE EMPLOYEES AS A COMBINED LUNCH AND WASH-ROOM. THE REASON FOR THE MEETING WAS EXPLAINED TO THEM. NO EMPLOYEES WERE WORKING AT THE QUARRY AT THAT TIME IN THE EVENING. ACCORDING TO THE EVIDENCE THE ROOM IN QUESTION IS NEVER LOCKED AND NO REQUEST TO HAVE THE USE OF THE ROOM WAS MADE TO ANY MEMBER OF MANAGEMENT. AT THE MEETING WHICH LASTED SOME FORTY-FIVE MINUTES, APPROXIMATELY 40 EMPLOYEES SUBSCRIBED THEIR SIGNATURES TO PETITION #2. NO MEMBERS OF MANAGEMENT WERE NOTIFIED OR WERE IN ATTENDANCE AT THE MEETING. BEACH AND BENNER SECURED THE REMAINING SIGNATURES ON PETITION #2 AT THE HOMES OF EMPLOYEES ON SUNDAY AND MONDAY EVENING, AUGUST 13TH AND 14TH. BEACH DELIVERED BOTH PETITIONS TO THE OFFICES OF THEIR SOLICITOR. BEACH, BENNER, STORM AND MCKNIGHT, ALL OF WHOM GAVE EVIDENCE AT THE HEARING, TESTIFIED THAT THEY HAD HAD NO DISCUSSION WITH ANY MEMBER OF MANAGEMENT ABOUT THE UNION, THE APPLICATION OR THE PETITIONS NOR WAS ANY MEMBER OF MANAGEMENT PRESENT WHEN ANY OF THE SIGNATURES WERE SECURED ON THE PETITIONS.

7. AFTER EACH OF THE WITNESSES WHO GAVE EVIDENCE RELATING TO THE PETITIONS WAS EXAMINED BY THE BOARD, THE BOARD FOLLOWING ITS USUAL PRACTICE AFFORDED TO THE REPRESENTATIVES OF ALL PARTIES AN OPPORTUNITY TO SUGGEST QUESTIONS THAT THE BOARD MIGHT ASK TO THE WITNESSES. IN THE ABSENCE OF ANY CHARGES BEING FILED RELATING TO THE PETITIONS, THE PRACTICE OF THE BOARD IS TO CONFINE SUCH QUESTIONS TO THOSE THAT ARE CONSISTENT WITH QUESTIONS THAT ARE ASKED IN AN EXAMINATION-IN-CHIEF OF ANY WITNESS. THE BOARD'S PRACTICE IS TO ONLY ALLOW CROSS-EXAMINATION BY AN APPLICANT TRADE UNION OF THE WITNESSES WHO TESTIFY IN SUPPORT OF PETITION WHERE CHARGES HAVE BEEN FILED AND THE UNION ESTABLISHES IN EVIDENCE A CASE, WHICH, IN THE OPINION OF THE BOARD, REQUIRES ANSWERING BY THE PETITIONERS. IT WAS CLEAR FROM THE QUESTIONS SUGGESTED BY THE REPRESENTATIVE OF THE APPLICANT THAT THE APPLICANT WAS FULLY APPRAISED OF THE IDENTITY OF THE FIVE EMPLOYEES WHO ORGANIZED THE PETITIONS, THEIR MOVEMENTS AT THE QUARRY ON THE MORNING OF SATURDAY, AUGUST 12TH, AND THE MANNER IN WHICH THE SIGNATURES WERE SECURED ON THE PETITIONS. NO CHARGES, HOWEVER, WERE FILED BY THE APPLICANT CONCERNING THE PETITIONS PRIOR TO THE HEARING NOR DID THE REPRESENTATIVE OF THE APPLICANT EXPRESS ANY DESIRE TO FILE CHARGES AT THE HEARING ITSELF PRIOR TO THE BOARD MAKING ITS INQUIRY INTO THE PETITIONS.

8. IT WAS ONLY AFTER ALL OF THE EVIDENCE RELATING TO THE PETITIONS HAD BEEN ADDUCED THAT THE REPRESENTATIVE OF THE APPLICANT THEN REQUESTED THAT HE BE PERMITTED TO FILE CHARGES ALLEGING MANAGEMENT SUPPORT OF THE PETITIONS. SECTION 47 OF THE BOARD'S RULES OF PROCEDURE AND REGULATIONS, AMONG OTHER THINGS, PROVIDES THAT WHERE A PARTY INTENDS TO ALLEGE AT THE HEARING OF AN APPLICATION IMPROPER OR IRREGULAR CONDUCT BY ANOTHER PARTY HE MUST FILE A NOTICE OF SUCH INTENTION THAT CONTAINS A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS



COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM. THIS THE APPLICANT FAILED TO DO.

9. SECTION 47 ALSO PROVIDES THAT WHERE IN THE OPINION OF THE BOARD A PARTY HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE CANNOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS EXCEPT WITH THE CONSENT OF THE BOARD. IT WAS APPARENT THAT THE APPLICANT HAD KNOWLEDGE SURROUNDING THE ORIGATION AND CIRCULATION OF THE PETITIONS SOME TIME IN ADVANCE OF THE HEARING. WE WOULD MENTION THAT THE PETITIONS WERE PREPARED AND CIRCULATED NEARLY TWO WEEKS PRIOR TO THE BOARD HEARING. IN THESE CIRCUMSTANCES THE BOARD SAW NO REASON TO PERMIT THE APPLICANT TO FILE ITS CHARGES PARTICULARLY AFTER ALL THE EVIDENCE IN SUPPORT OF THE PETITIONS HAD ALREADY BEEN ADDUCED. WE WOULD ADD THAT THE BOARD WOULD NOT HAVE MADE ITS USUAL INQUIRY WITH RESPECT TO THE PETITIONS AT THE HEARING HAD IT KNOWN THAT THE APPLICANT INTENDED TO FILE CHARGES AT THE HEARING FOR THE RESPONDENT AND GROUP OF EMPLOYEES SUPPORTING THE PETITIONS WOULD HAVE BEEN ENTITLED TO HAVE AN OPPORTUNITY TO PREPARE THEMSELVES TO MEET ANY CHARGES MADE AGAINST THEM. FURTHERMORE, THE APPLICANT OFFERED NO VALID EXPLANATION FOR ITS FAILURE TO FILE ITS CHARGES PRIOR TO THE HEARING. THE BOARD ACCORDINGLY RULED THAT IT WAS NOT PREPARED TO PERMIT THE APPLICANT TO FILE ANY CHARGES AT THAT STAGE IN THE PROCEEDINGS.

10. THE REPRESENTATIVE OF THE APPLICANT AT THIS POINT CHALLENGED THE STATUS OF DONALD DAYBOLL, BRUCE MCKNIGHT AND ARTHUR STORM ALLEGING THAT THEY WERE NOT LEAD HANDS BUT RATHER THAT THEY WERE MEMBERS OF MANAGEMENT. AS WE HAVE ALREADY POINTED OUT, THE APPLICANT KNEW THE IDENTITY OF THE PERSONS WHO ACTIVELY SUPPORTED THE PETITIONS PRIOR TO THE HEARING, INCLUDING THE IDENTITY OF DAYBOLL, MCKNIGHT AND STORM. WE REJECT THE CLAIM MADE BY THE REPRESENTATIVE OF THE APPLICANT AT THE CONCLUSION OF THE HEARING THAT THE APPLICANT DID NOT KNOW WHICH OF THE THREE PERSONS BY THE NAME OF DAYBOLL IN THE EMPLOY OF THE RESPONDENT WAS INVOLVED WITH THE PETITIONS. IT WAS, IN FACT, THE REPRESENTATIVE OF THE APPLICANT WHO FIRST MENTIONED DAYBOLL'S NAME AT THE HEARING AND MR. NICHOLSON CLEARLY WAS IN NO DOUBT AS TO HIS IDENTITY. DESPITE THIS KNOWLEDGE AND THE APPLICANT'S CONVICTION THAT DAYBOLL, MCKNIGHT AND STORM WERE MEMBERS OF MANAGEMENT, THE APPLICANT CHOSE NOT TO FILE ANY CHARGES RELATING TO THEIR SUPPORT OF THE PETITIONS IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE.

11. ORDINARILY, WHERE DURING THE COURSE OF AN INQUIRY INTO A PETITION FILED IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION, THE EVIDENCE REVEALS PARTICIPATION OF A PERSON OR PERSONS WHOM THE APPLICANT TRADE UNION BELIEVES TO BE MEMBERS OF MANAGEMENT, THE APPLICANT UNION WOULD BE ENTITLED TO CHALLENGE THE STATUS OF THE PERSON CONCERNED. THIS WOULD BE THE CASE SINCE IT COULD NOT BE ASSUMED THAT THE UNION WOULD NECESSARILY BE AWARE OF THE ROLE OF THAT PERSON WITH RESPECT TO THE PETITION. MOREOVER, IN SUCH A CASE,

THE UNION WOULD NOT USUALLY HAVE ANY PARTICULAR REASON TO INQUIRE, AT A PRIOR TIME IN THE PROCEEDINGS, AS TO WHETHER THAT PERSON WAS INCLUDED ON THE LIST FILED BY THE RESPONDENT.

12. AN ENTIRELY DIFFERENT SET OF CIRCUMSTANCES EXISTS IN THE INSTANT CASE. HERE THE APPLICANT HAD KNOWLEDGE OF THE ROLE PLAYED BY DAYBOLL, MCKNIGHT AND STORM AND ALTHOUGH THE REPRESENTATIVE OF THE APPLICANT ALLEGES THAT THEY ARE MEMBERS OF MANAGEMENT, THE APPLICANT ELECTED NOT TO FILE ANY CHARGES RELATING TO THEIR ACTIVITIES. FOR THE REASON GIVEN ABOVE, THE BOARD RULED THAT IT WAS NOT PREPARED TO PERMIT THE APPLICANT TO FILE CHARGES OF MANAGEMENT SUPPORT FOR THE PETITIONS AT THE STAGE AT WHICH THE REPRESENTATIVE OF THE APPLICANT ATTEMPTED TO DO SO, THAT IS, AFTER THE EVIDENCE WAS ADDUCED RELATING TO THE PETITIONS. THE STATUS OF DAYBOLL, MCKNIGHT AND STORM, HOWEVER, ARE AN INTEGRAL PART OF THE APPLICANT'S CHARGES. ACCORDINGLY, FOR THE BOARD NOW TO PERMIT THE APPLICANT TO SUCCEED IN CHALLENGING THE STATUS OF DAYBOLL, MCKNIGHT AND STORM, IN EFFECT, WOULD BE TO ENTERTAIN THE APPLICANT'S CHARGES. THIS THE BOARD CANNOT ALLOW WITHOUT MAKING A MOCKERY OF ITS RULING ON THE CHARGES. HAD THE APPLICANT FILED ITS CHARGES IN ADVANCE OF THE HEARING NAMING DAYBOLL, MCKNIGHT AND STORM AS MEMBERS OF MANAGEMENT WHO ACTIVELY SUPPORTED THE PETITIONS, THE BOARD, WITHOUT HESITATION, WOULD HAVE APPOINTED AN EXAMINER TO INQUIRE INTO THEIR DUTIES AND RESPONSIBILITIES, BUT PRIOR TO ANY INQUIRY INTO THE PETITIONS OR THE CHARGES. IN THE PRESENT SITUATION, HOWEVER, STATED BRIEFLY, THE APPLICANT IS TOO LATE IN MAKING ITS CHALLENGE TO THEIR STATUS.

13. BY A DECISION DATED AUGUST 31ST, 1967, THE BOARD FOUND THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS QUARRY AND PLANTS IN THE TOWNSHIP OF WAINFLEET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. BECAUSE OF THE UNCERTAINTY AS TO THE EXACT NUMBER OF EMPLOYEES WHO WERE TO BE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT, W. G. JACKSON, EXAMINER, WAS AUTHORIZED BY THE BOARD TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST FILED BY THE RESPONDENT. HIS AUTHORITY, WE WOULD ADD, WAS LIMITED STRICTLY TO AN INQUIRY INTO THE RESPONDENT'S LIST.

14. ON THE BASIS OF THE INFORMATION CONTAINED IN THE REPORT OF THE EXAMINER DATED SEPTEMBER 28TH, 1967, THE BOARD FINDS THAT THERE WERE 106 PERSONS IN THE BARGAINING UNIT IN THE EMPLOY OF THE RESPONDENT AS OF THE DATE OF APPLICATION WHO ARE INCLUDED ON THE RESPONDENT'S LIST FOR PURPOSES OF THE COUNT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF 60 PERSONS WHOSE NAMES CORRESPOND WITH THOSE APPEARING ON THE RESPONDENT'S LIST. THIS FIGURE REPRESENTS MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AND HAVING REGARD TO THE "OVERLAP" WITH NAMES APPEARING ON

THE PETITIONS, CONFIRMS THAT THE PETITIONS ARE RELEVANT IN THIS MATTER.

15. WE WOULD MENTION HERE THAT, SUBSEQUENT TO THE ISSUING OF THE REPORT OF THE EXAMINER, THE REPRESENTATIVE OF THE APPLICANT BY LETTER DATED OCTOBER 5TH, 1967, REQUESTED A HEARING OF THE BOARD FOR THE PURPOSE OF PERMITTING THE APPLICANT TO MAKE REPRESENTATIONS CONCERNING OMISSIONS FROM THE REPORT. IN THIS REGARD, THE REPRESENTATIVE OF THE APPLICANT MADE REFERENCE TO A PREVIOUS LETTER TO THE BOARD DATED SEPTEMBER 27TH, 1967. THE EXAMINER APPOINTED IN THIS MATTER EXAMINED THE EMPLOYMENT RECORDS IN THE FORM OF PAYROLL SHEETS AND FOUND THE LIST FILED BY THE RESPONDENT TO BE CORRECT. IF THE REPRESENTATIVE OF THE APPLICANT WHO WAS PRESENT AT THE TWO MEETINGS OF THE EXAMINER WAS NOT SATISFIED WITH THE EVIDENCE OF EMPLOYMENT AS CONTAINED IN THE PAYROLL RECORDS OF THE RESPONDENT, IT WAS INCUMBENT UPON HIM TO ADDUCE EVIDENCE AT THE HEARING BEFORE THE EXAMINER WHICH REFUTED OR CAST DOUBT ON THE RESPONDENT'S RECORDS. THIS THE APPLICANT DID NOT DO. THE BOARD HAS ALREADY MADE ITS POSITION CLEAR WITH RESPECT TO ANY INQUIRY AT THIS TIME INTO THE DUTIES AND RESPONSIBILITIES OF DAYBOLL, MCKNIGHT AND STORM. NO MATTERS ARE RAISED IN THE LETTERS OF THE REPRESENTATIVE OF THE APPLICANT DATED SEPTEMBER 27TH AND OCTOBER 5TH THAT SATISFY THE BOARD THAT THE APPLICANT IS ENTITLED TO A FURTHER HEARING IN THIS MATTER OR THAT ANY USEFUL PURPOSE WOULD BE SERVICED BY SUCH A HEARING. THE APPLICANT'S REQUEST ACCORDINGLY IS DENIED.

16. THE REPORT OF SEPTEMBER 28TH, 1967, STATES, IN PART, THAT THE PARTIES ADVISED THE EXAMINER THAT THEY INTENDED TO MAKE REPRESENTATIONS TO THE BOARD ON THE OCCUPATION OF PERSONS ON WORK WHICH MAY BE WITHIN THE JURISDICTION OF OTHER CERTIFICATIONS OR AGREEMENTS. THE ONLY PERSONS CONCERNED ARE CLARENCE HOUSE AND ORLIN HOUSE. THE EVIDENCE IN THE REPORT IS THAT ORLIN HOUSE WAS WORKING BOTH AT THE PLANT/QUARRY AND CONSTRUCTION WORK ON A ROAD AT THOROLD IN THE PERIOD BETWEEN JULY 10TH AND SEPTEMBER 10TH. ORLIN HOUSE, HAVING BEEN EMPLOYED AT THE PLANT/QUARRY BOTH WITHIN A PERIOD PRIOR TO THE DATE OF APPLICATION AND WITHIN A PERIOD OF A MONTH AFTER THE DATE OF APPLICATION, IS INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE EVIDENCE IN THE REPORT RELATING TO CLARENCE HOUSE IS THAT OVER THE ENTIRE TWO MONTH PERIOD CONCERNED HE WAS WORKING SOLELY ON THE CONSTRUCTION JOB AT THOROLD. FOLLOWING THE BOARD'S USUAL PRACTICE, CLARENCE HOUSE IS NOT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. NO PARTY TO THE PROCEEDING, IN FACT, MADE REPRESENTATIONS TO THE BOARD WITH RESPECT TO THE ABOVE TWO PERSONS. WE WOULD ADD THAT WHETHER OR NOT ONE OR BOTH OF THEM ARE INCLUDED OR EXCLUDED FROM THE BARGAINING UNIT FOR PURPOSES OF THE COUNT, IT DOES NOT MATERIALLY AFFECT THE MEMBERSHIP POSITION OF THE APPLICANT.

17. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT THE PETITIONS CIRCULATED IN OPPOSITION TO THE APPLICATION SUFFICIENTLY WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO

SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

18. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 17TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

20. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

21. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

NOVEMBER 15, 1967.

THE REAL ISSUE INVOLVED IN THIS CASE IS A VERY SIMPLE ONE. IT AMOUNTS TO THE DENIAL BY THE MAJORITY, OF THE APPLICANT UNION'S REQUEST TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF MR. DAYBOLL AND OTHER EMPLOYEES ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT COMPANY WHO ARE CLASSIFIED IN SUCH LIST AS LEAD HANDS.

THE BOARD HAD BEFORE IT TWO PETITIONS OPPOSING THE UNION, ONE WHICH IS ALLEGED TO REPRESENT THE TRUE WISHES OF EMPLOYEES OTHER THAN LEAD HANDS AND, THE OTHER A PETITION BY ALLEGED LEAD HANDS.

AT THE OUTSET OF THE HEARING THE APPLICANT UNION AGREED TO A BARGAINING UNIT WHICH INCLUDED AMONG OTHERS 'LEAD HANDS'. SINCE THE LIST OF EMPLOYEES IN THE PROPOSED BARGAINING UNIT IS, AS IS THE BOARD'S USUAL PRACTICE, NOT MADE KNOWN TO THE APPLICANT UNION, AND SINCE THE EMPLOYEES NAMED IN SUCH LIST ARE NOT KNOWN TO THE UNION AT THE TIME OF THE HEARING, AN APPLICANT UNION CAN ONLY ASSUME THAT SUCH LIST DOES NOT INCLUDE CERTAIN MANAGERIAL EMPLOYEES. HOWEVER, THEY HAVE NO WAY OF KNOWING WHETHER OR NOT IN FACT SUCH LIST DOES INCLUDE CERTAIN MEMBERS OF MANAGEMENT. IF THEY HAVE REASON TO BELIEVE AT ANY TIME THAT THE LIST OF EMPLOYEES DOES INCLUDE MANAGERIAL PERSONS, THEN THE APPLICANT UNION HAS THE RIGHT TO CHALLENGE SUCH LIST. THE APPLICANT UNION IN THE INSTANT CASE, AT THE OUTSET OF THE HEARING, AGREED TO THE INCLUSION OF LEAD HANDS, AND IN FACT ARE NOT DISAGREEING WITH THAT INCLUSION AT THIS TIME OR AT ANYTIME DURING THE HEARING.



THEIR CHALLENGE TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IS BASED ON THEIR UNDERSTANDING FROM THE EVIDENCE ADDUCED AT THE HEARING THAT CERTAIN EMPLOYEES CLASSIFIED BY THE RESPONDENT AS 'LEAD HANDS' ARE, IN FACT, FOREMEN AND DO EXERCISE MANAGERIAL FUNCTIONS, AS IS THE APPLICANT UNION'S RIGHT, HAVING BECOME AWARE OF THIS KNOWLEDGE, THEY CHALLENGED THE CORRECTNESS OF THE LIST SUPPLIED TO THE BOARD BY THE RESPONDENT COMPANY. THE MAJORITY, IN THEIR DECISION HAVE DENIED TO THE APPLICANT UNION THE RIGHT TO CHALLENGE THE LIST OF EMPLOYEES FILED BY A RESPONDENT EMPLOYER. IN EFFECT THE MAJORITY HAVE DEPARTED FROM THE CONCEPT OF NATURAL JUSTICE IN DENYING TO ONE PARTY THE RIGHT TO HAVE AN INQUIRY INTO ALLEGED WRONG-DOING BY ANOTHER PARTY. THE MAJORITY HAVE, IN THE INSTANT CASE, DENIED TO THE APPLICANT THE LONG ESTABLISHED AND CUSTOMARY RIGHT TO CHALLENGE THE INCLUSION OF MANAGERIAL EMPLOYEES IN THE LIST OF EMPLOYEES IN THE PROPOSED BARGAINING UNIT. IN MY RESPECTFUL OPINION THE MAJORITY HAVE ERRED IN THAT THEY HAVE DENIED TO THIS APPLICANT THAT WHICH IS READILY GIVEN TO RESPONDENT COMPANIES AND APPLICANT UNIONS IN CERTIFICATION HEARINGS, A RIGHT OF CHALLENGE TO DETERMINE WHETHER CERTAIN NAMED PERSONS EXERCISE MANAGERIAL FUNCTIONS OR OTHERWISE.

I DO NOT WISH TO DEAL WITH THE PETITION IN THIS DECISION, EXCEPT TO SAY THAT THE PETITION ITSELF, AND THE CIRCUMSTANCES UNDER WHICH THE PETITION WAS ORIGINATED AND CIRCULATED, ARE TO SAY THE VERY LEAST, SUSPECT. HOWEVER TO DEAL WITH THE MERITS OR OTHERWISE OF THE PETITION IS TO DRAW A 'RED HERRING' OVER THE POINT AT ISSUE IN THIS DISPUTE. THE SIMPLE POINT IS THE DENIAL BY THE MAJORITY OF THE APPLICANT'S REQUEST FOR A BOARD EXAMINER TO LOOK INTO THE DUTIES AND RESPONSIBILITIES OF CERTAIN NAMED EMPLOYEES IN THE RESPONDENT COMPANY'S LIST OF EMPLOYEES.

COUNSEL FOR THE UNION, MR. DON NICHOLSON, IS NOT A WITNESS IN THE INSTANT CASE. HIS Demeanour AND CONDUCT AT THE HEARING INTO THIS MATTER IS BEYOND REPROACH. THE BOARD HAS NO EVIDENCE ON WHICH TO PASS JUDGMENT AS TO WHAT HIS KNOWLEDGE WAS, OR WAS NOT, PRIOR TO THE HEARING. HIS CHALLENGING THE LIST OF EMPLOYEES FILED BY THE RESPONDENT ON BEHALF OF THE APPLICANT UNION WAS, IN MY ESTIMATION, THE RIGHT AND PROPER THING TO DO INsofar AS HIS DUTIES AS COUNSEL FOR THE APPLICANT UNION WAS CONCERNED. THE MAJORITY APPEARS TO ME TO BE UNDULY HARSH IN THIS CASE, IN DENYING THE SIMPLE AND HONEST REQUEST OF THE APPLICANT UNION TO LOOK INTO THE DUTIES AND RESPONSIBILITIES OF MR. DAYBOLL AND OTHER ALLEGED LEAD HANDS.

I WOULD GRANT THE APPLICANT'S REQUEST TO APPOINT AN EXAMINER TO LOOK INTO THE DUTIES AND RESPONSIBILITIES OF MR. DAYBOLL AND OTHER EMPLOYEES LISTED BY THE RESPONDENT AS 'LEAD HANDS'. HAVING DONE THIS I WOULD THEN, IN JUSTICE, TURN MY ATTENTION TO THE WEIGHT THE BOARD SHOULD GIVE TO SUCH PETITION. IF AND WHEN IT WERE ESTABLISHED TO THE BOARD'S SATISFACTION THAT MANAGEMENT DID NOT HAVE A HAND IN THE ORIGINATION AND CIRCULATION OF THESE PETITIONS OPPOSING

THE UNION, I WOULD THEN BE IN A POSITION TO MAKE A JUST DECISION. IN THE ABSENCE OF SUCH INFORMED KNOWLEDGE I HAVE NO DIFFICULTY DECIDING THAT NO WEIGHT BE GIVEN TO THE PETITION PRESENTED TO THE BOARD AND THAT THE APPLICANT BE CERTIFIED FOR THE UNIT AGREED TO BY THE PARTIES.

13551-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. L. ROCCA CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: NOVEMBER 22, 1967.

1. ON SEPTEMBER 14, 1967, THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN IN THIS MATTER. THE APPLICANT SUBSEQUENTLY INFORMED THE BOARD THAT THERE WERE NO EMPLOYEES ELIGIBLE TO VOTE. ON SEPTEMBER 22, 1967, THE BOARD DIRECTED THE PARTIES TO INFORM THE REGISTRAR AS SOON AS THE RESPONDENT HAD IN ITS EMPLOY EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S DECISION OF SEPTEMBER 14, 1967. ON NOVEMBER 10, 1967, THE APPLICANT, BY LETTER, ASKED THE BOARD FOR PERMISSION TO WITHDRAW ITS APPLICATION WITHOUT PREJUDICE. IN REPLY TO THIS REQUEST, THE RESPONDENT BY, LETTER, DATED NOVEMBER 14, 1967, REQUESTED THE BOARD TO DISMISS THE APPLICATION. THE APPLICANT IN A FURTHER LETTER DATED NOVEMBER 17, 1967, MAINTAINED ITS ORIGINAL POSITION.

2. THE BOARD'S RECENT PRACTICE IN SUCH CASES IS TO TERMINATE THE PROCEEDING. SEE, FOR EXAMPLE, CLAIRSON CONSTRUCTION COMPANY LIMITED BOARD FILE NO. 12748-66-R, DECISION DATED NOVEMBER 10, 1967. IN ALL THE CIRCUMSTANCES THE BOARD IS OF THE OPINION THAT THIS IS THE APPROPRIATE ACTION TO BE TAKEN IN THIS MATTER AND, ACCORDINGLY, THIS PROCEEDING IS HEREBY TERMINATED.

13567-67-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CANADA CEMENT COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES  
AND H. F. IRWIN.

APPEARANCES AT HEARING: MARTIN LEVINSON, D. BURSHAW, K. GROSS FOR THE APPLICANT, F. G. HAMILTON, E. HUTCHINSON, R.D. WHYTE, R. HALL FOR THE RESPONDENT, AND NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: NOVEMBER 1, 1967.

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4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE GENERAL PLANT OFFICE AND STORES OFFICE IN THE TOWNSHIP OF WEST ZORRA, SAVE AND EXCEPT FOREMEN AND ASSISTANT CHIEF CLERK, PERSONS ABOVE THE RANK OF FOREMAN AND ASSISTANT CHIEF CLERK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE SECRETARY TO THE PLANT MANAGER IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT AND ACCORDINGLY IS EXCLUDED FROM THE BARGAINING UNIT.

6. BY ITS DECISION OF SEPTEMBER 13TH, 1967, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF HOWARD ADKIN, STOREKEEPER AND ROBERT GRAHAM, ANALYST. THE APPLICANT CLAIMS BOTH THESE PERSONS AS BEING APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT.

7. HAVING REGARD TO THE WHOLE OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AS TO THE DUTIES AND RESPONSIBILITIES OF THESE PERSONS, THE BOARD DECLARES THAT HOWARD ADKIN, STOREKEEPER, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE FOR THE PURPOSES OF THE ACT AND IS EXCLUDED FROM THE BARGAINING UNIT. THE BOARD FURTHER DECLARES THAT ROBERT GRAHAM, ANALYST, HAS LITTLE OR NO COMMUNITY OF INTEREST WITH THE OFFICE AND CLERICAL GROUP AND THEREFORE IS NOT AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT. THE BOARD, IN ARRIVING AT ITS DECISION IN REGARD TO THE ABOVE, HAS REFERRED TO THE FALCONBRIDGE NICKEL MINE LIMITED CASE, O.L.R.B., MONTHLY REPORT, SEPTEMBER, 1966, P. 379 AND THE LAKE ONTARIO PORTLAND CEMENT LIMITED CASE, O.L.R.B., MONTHLY REPORT, JULY, 1960, P. 188.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 5TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13649-67-R: KINGSTON INDEPENDENT NYLON WORKERS UNION (APPLICANT) V. DU PONT OF CANADA LIMITED (RESPONDENT) V. TEXTILE WORKERS' UNION OF AMERICA, CLC. AFL-CIO (INTERVENER) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160 (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: S. L. ROBINS, Q.C., J. B. WATERMAN AND CYRIL CHAPMAN FOR THE APPLICANT, F. G. HAMILTON, W. S. BEARS AND W. C. MCCALLUM FOR THE RESPONDENT, T. E. ARMSTRONG AND C. CLARKE FOR TEXTILE WORKERS' UNION OF AMERICA, CLC. AFL-CIO, AND IAN SCOTT, FRANK J. DALY AND BILL KEGES FOR DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON: NOVEMBER 9, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION ARE PRESENTLY REPRESENTED BY DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160, AND IT WAS AGREED BY ALL PARTIES THAT THE BARGAINING UNIT NOW IN EXISTENCE WOULD BE APPROPRIATE IN THE INSTANT CASE.

2. AT THE HEARING IN THIS MATTER, EVIDENCE WAS HEARD RELATING TO THE STATUS OF THE APPLICANT, KINGSTON INDEPENDENT NYLON WORKERS UNION, AS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. HAVING CONSIDERED ALL OF THE EVIDENCE AND ARGUMENTS RELATING TO THIS ISSUE, THE BOARD IS SATISFIED THAT THE APPLICANT IS AN ORGANIZATION WHICH MEETS THE REQUIREMENTS OF THE STATUTE IN THIS CONNECTION. THE INTERVENERS, IN OPPOSING THE APPLICATION, PLACED GREAT EMPHASIS ON THE WORDING OF ARTICLE 3(1) OF THE APPLICANT'S CONSTITUTION, BY WHICH IT IS PROVIDED THAT "MEMBERSHIP IN THE UNION SHALL BE OPEN TO ALL REGULAR EMPLOYEES OF DU PONT OF CANADA LTD., KINGSTON WORKS". IT IS OUR VIEW THAT THIS LANGUAGE IS NOT SUCH AS TO RESTRICT FROM MEMBERSHIP ANY PERSON COMING WITHIN THE BARGAINING UNIT. "EMPLOYEE" IS DEFINED IN THE CONSTITUTION AS FOLLOWS:

"EMPLOYEE" - SHALL MEAN A PERSON EMPLOYED BY DU PONT OF CANADA LTD., KINGSTON WORKS, TO DO SKILLED OR UNSKILLED MANUAL, CLERICAL OR TECHNICAL WORK; BUT DOES NOT INCLUDE A PERSON EMPLOYED IN A CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY OR DISCHARGE EMPLOYEES.

AND AMONG THE PURPOSES OF THE ORGANIZATION IS THE FOLLOWING:

1. UNITE ALL THE EMPLOYEES IN THE COMPANY TOGETHER IN ONE ORGANIZATION, COMPLETELY UNDER THE CONTROL OF ITS MEMBERS, AND CAPABLE OF TAKING COMMON ACTION IN ANY MATTER WHICH AFFECTS THE WELFARE OF THE EMPLOYEE.



HAVING REGARD TO THE WHOLE OF THE DOCUMENT, IT IS OUR VIEW THAT THE WORD "REGULAR" AS IT APPEARS IN ARTICLE 3(1) DOES NOT CONSTITUTE A RESTRICTION ON THE RIGHT OF EMPLOYEES OF THE RESPONDENT COMING WITHIN AN APPROPRIATE BARGAINING UNIT TO BECOME MEMBERS OF THE APPLICANT.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

4. THE FURTHER OBJECTION WAS TAKEN THAT THE APPLICATION WAS NOT TIMELY. THE APPLICANT PREVIOUSLY APPLIED TO THIS BOARD FOR CERTIFICATION, WITH RESPECT TO THE SAME UNIT OF EMPLOYEES, ON JULY 24TH, 1967. AT THAT TIME IT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. A SIMILAR APPLICATION HAD BEEN MADE BY THE TEXTILE WORKERS' UNION OF AMERICA, CLC, AFL-CIO ON JULY 19TH, 1967. PURSUANT TO THE PROVISION OF SECTION 77 (3) (A) OF THE LABOUR RELATIONS ACT, THE BOARD TREATED THE APPLICATION OF KINGSTON INDEPENDENT NYLON WORKERS UNION AS HAVING BEEN MADE ON JULY 19TH, 1967. IN ADDITION TO THIS THE BOARD, HAVING REGARD TO THE PROVISIONS OF SECTION 8 OF THE ACT, REFUSED THE REQUEST OF KINGSTON INDEPENDENT NYLON WORKERS UNION FOR AN EXTENSION OF THE TERMINAL DATE IN THAT APPLICATION. SUBSEQUENTLY, IN AN ENDORSEMENT OF THE RECORD DATED AUGUST 9TH, 1967, THE BOARD STATED THAT KINGSTON INDEPENDENT NYLON WORKERS UNION HAD SUBMITTED EVIDENCE WITH RESPECT TO LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES CONCERNED AT THE TIME THE APPLICATION WAS MADE (THAT IS, ON JULY 19TH, 1967), AND, HAVING REGARD TO SECTION 8 (3) OF THE ACT, DISMISSED THEIR APPLICATION. IN THOSE PROCEEDINGS THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN IN WHICH VOTERS WERE GIVEN A CHOICE BETWEEN THE TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO, AND DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160. ON THE TAKING OF THE VOTE, NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO, AND THEIR APPLICATION WAS ACCORDINGLY DISMISSED. THE BOARD, FOLLOWING ITS USUAL PRACTICE, IMPOSED A SIX-MONTHS' BAR ON APPLICATIONS FOR CERTIFICATION BY THAT UNION WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT.

5. IT IS URGED THAT, IN THESE CIRCUMSTANCES, THE KINGSTON INDEPENDENT NYLON WORKERS UNION OUGHT NOT TO BE PERMITTED TO PROCEED WITH ITS APPLICATION FOR CERTIFICATION. ADMITTEDLY, NO EXPRESS BAR WAS IMPOSED BY THE BOARD UPON THE APPLICANT IN THE PREVIOUS PROCEEDINGS INVOLVING THESE PARTIES. COUNSEL FOR THE INTERVENERS, HOWEVER, RELY UPON CERTAIN OF THE BOARD'S DECISIONS IN SUPPORT OF THEIR CONTENTION.

6. IN THE TRINIDAD LEASEHOLDS CASE, 52 C.L.L.C. 1354, AN APPLICATION FOR CERTIFICATION HAD BEEN MADE ON MAY 28TH, 1949. THE APPLICATION WAS APPARENTLY TIMELY, ALTHOUGH THERE WAS A COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THE RESPONDENT EMPLOYER AND ANOTHER TRADE UNION, COVERING THE EMPLOYEES AFFECTED BY THE APPLICATION. ON JULY 27TH, 1949, THE APPLICATION WAS DISMISSED BY THE BOARD ON THE GROUND THAT THE APPLICANT DID NOT HAVE AS MEMBERS IN GOOD STANDING A MAJORITY OF THE EMPLOYEES CONCERNED. ON JULY

28TH, 1949, A SECOND APPLICATION WAS FILED BY THE APPLICANT, AND THIS SECOND APPLICATION WAS DISMISSED BY THE BOARD ON THE GROUND THAT, WHERE THERE IS A CURRENT AND ACTIVE COLLECTIVE BARGAINING RELATIONSHIP, AND WHERE AN APPLICATION, PROPERLY MADE UNDER THE REGULATIONS, IS REJECTED ON THE GROUND THAT THE APPLICANT DOES NOT ENJOY THE REQUISITE EMPLOYEE SUPPORT, A SECOND APPLICATION BY THE SAME APPLICANT SHOULD NOT BE ENTERTAINED BY THE BOARD UNTIL A REASONABLE OPPORTUNITY HAS BEEN GIVEN TO THE PARTIES TO THE COLLECTIVE AGREEMENT TO BARGAIN COLLECTIVELY WITH A VIEW TO ITS RENEWAL. THIS DECISION WAS FOLLOWED IN THE WINDSOR LUMBER CASE, 58 C.L.C. 1596, WHERE THE BOARD HELD THAT, IN THE ABSENCE OF SPECIAL CIRCUMSTANCES, THE PRINCIPLES OF THE TRINIDAD LEASEHOLDS CASE OUGHT TO BE EXTENDED TO A SITUATION WHERE A REPRESENTATION APPLICATION WAS MADE DURING THE "OPEN SEASON" OF A COLLECTIVE AGREEMENT. THE FACT THAT THE MEMBERSHIP CARDS FILED BY THE APPLICANT ON ITS FIRST APPLICATION IN THE WINDSOR LUMBER CASE WERE DATED MORE THAN TWELVE MONTHS PRIOR TO THE DATE OF THE APPLICATION (AND HENCE DID NOT MEET THE BOARD'S REQUIREMENTS RELATING TO EVIDENCE OF MEMBERSHIP) WAS NOT THE SORT OF "SPECIAL CIRCUMSTANCES" WHICH WOULD AVOID THE APPLICATION OF THE PRINCIPLE.

7. WE WOULD, WITH RESPECT, AFFIRM THE PRINCIPLES SET OUT IN THE TRINIDAD LEASEHOLDS CASE AND THE WINDSOR LUMBER CASE. THE CERTIFICATION PROVISIONS OF THE ACT AND REGULATIONS ARE DESIGNED TO FACILITATE THE ORDERLY DISPOSITION OF REPRESENTATION MATTERS. THIS PROCESS IS IN AID OF THE PRIMARY OBJECTIVE OF PROMOTING SOUND AND EFFECTIVE COLLECTIVE BARGAINING, AND IT IS EVIDENT THAT, AS IS STATED IN THE TRINIDAD LEASEHOLDS CASE, COLLECTIVE BARGAINING WILL NOT FLOURISH NOT WILL A SOUND COLLECTIVE BARGAINING RELATIONSHIP ENDURE WHERE A QUESTION OF REPRESENTATION OF EMPLOYEES IS OUTSTANDING. IT IS FURTHER EVIDENT, AS THE BOARD THERE STATED, THAT QUESTIONS OF REPRESENTATION ARE NOT TO BE RAISED INDISCRIMINATELY, AND THAT THE DETERMINATION OF SUCH QUESTIONS IS TO INVOLVE A MEASURE OF FINALITY.

8. IN OUR VIEW, HOWEVER, IT MUST BE RECOGNIZED THAT THE CIRCUMSTANCES IN WHICH THE APPLICANT'S FIRST APPLICATION WAS DISPOSED OF ARE NOT ON ALL FOURS WITH THE CIRCUMSTANCES WHICH OBTAINED IN EITHER THE TRINIDAD LEASEHOLDS CASE OR THE WINDSOR LUMBER CASE. IN THE PREVIOUS APPLICATION BY THE KINGSTON INDEPENDENT NYLON WORKERS UNION, THE APPLICATION WAS, BY VIRTUE OF THE PROVISIONS OF SECTION 77(3)(A) OF THE ACT, AND BY REASON OF AN APPLICATION HAVING PREVIOUSLY BEEN MADE BY ANOTHER UNION, CONSIDERED TO HAVE BEEN MADE ON A DATE EARLIER THAN THE DATE ON WHICH IT WAS IN FACT MADE. WHILE THE OUTCOME OF THAT APPLICATION MAY HAVE BEEN AFFECTED BY THE OPERATION OF THOSE PROVISIONS OF THE ACT, IT APPEARS TO US TO BE BOTH UNFAIR, AND UNDULY TECHNICAL, TO GIVE THOSE PROVISIONS AN APPLICATION GOING BEYOND THEIR NECESSARY EFFECT. AS WAS POINTED OUT IN THE TRINIDAD LEASEHOLDS CASE, THE QUESTION IS ONE OF WEIGHING THE RIGHT OF EMPLOYEES TO SELECT A NEW BARGAINING AGENT AGAINST THE DESIRABILITY OF SECURING STABILITY AND CONTINUITY IN COLLECTIVE BARGAINING. IN OUR VIEW, THAT BALANCE WOULD

NOT BE PROPERLY HELD IF WE WERE TO REJECT THE INSTANT APPLICATION IN THE LIGHT OF THE EARLIER PROCEEDINGS. IT IS OUR CONCLUSION THAT THIS APPLICATION IS TIMELY.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY SET OUT BELOW, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 26TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY CONSISTING OF ALL EMPLOYEES OF THE RESPONDENT AT ITS NYLON MANUFACTURING PLANT IN THE TOWNSHIP OF KINGSTON, COUNTY OF FRONTENAC, KNOWN AS ITS KINGSTON WORKS, WHO ARE PAID AT AN HOURLY RATE, SAVE AND EXCEPT OFFICE STAFF, GUARDS, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN AND STUDENTS EMPLOYED FOR THE SUMMER VACATION PERIOD.

11. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES:

NOVEMBER 9, 1967.

I DISSENT.

THE PRINCIPLES OF THE TRINIDAD LEASEHOLDS CASE AND THE RELATED CASES FOLLOWING IT SHOULD BE APPLIED HERE IN MY OPINION. THIS WOULD ALLOW THE INCUMBENT BARGAINING AGENT TO CONTINUE BARGAINING TOWARD A RENEWAL OF THE COLLECTIVE AGREEMENT FREE OF THE HARASSMENT OF STILL ANOTHER ELECTION CAMPAIGN AT THIS TIME.

ACCORDINGLY, I WOULD DISMISS THE APPLICATION OF THE APPLICANT.

13656-67-R: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. PRECISION AUTOMOTIVE CO. LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. SACK, TOM CORRIGAN AND GIL DAVIS FOR THE APPLICANT, JOHN P. SANDERSON, S. SHAPIRO AND F.R. VON VEN FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 8, 1967.

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2. THE APPLICANT IN THIS CASE HAD PREVIOUSLY APPLIED FOR A UNIT OF EMPLOYEES OF THE RESPONDENT AND FOLLOWING THE APPLICANT'S REQUEST FOR LEAVE TO WITHDRAW THAT APPLICATION, THE BOARD IN ITS DECISION DATED SEPTEMBER 19TH, 1967, IN BOARD FILE NO. 13605-67-R, DISMISSED THE APPLICATION. ON SEPTEMBER 19TH, 1967, THE APPLICANT FILED THE INSTANT APPLICATION. SUBSEQUENTLY, BY REGISTERED LETTER DATED SEPTEMBER 27TH, 1967 (THE TERMINAL DATE FOR THIS APPLICATION) THE APPLICANT FILED FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, ON BEHALF OF FIFTY-EIGHT PERSONS WHOM THE APPLICANT PURPORTEDLY CLAIMED AS MEMBERS. THE APPLICANT AT THE SAME TIME FILED SIX "ADDITIONAL" MEMBERSHIP DOCUMENTS. NO REQUEST WAS RECEIVED FROM THE APPLICANT TO TRANSFER THE MEMBERSHIP DOCUMENTS WHICH HAD BEEN FILED IN BOARD FILE NO. 13605-67-R.

3. ALTHOUGH IT IS APPARENT FROM THE DOCUMENTS ON FILE THAT THE APPLICANT ASSUMED THAT THE REQUEST HAD BEEN MADE THROUGH INADVERTENCE OR MISADVENTURE, NO REQUEST TO TRANSFER THE CARDS IN QUESTION WAS MADE BY EITHER THE SOLICITORS FOR THE APPLICANT OR BY ANY OF THE APPLICANT'S OFFICERS UNTIL NOVEMBER 7TH, 1967, THE HEARING OF THIS MATTER.

4. IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY 1966, P. 259, THE BOARD STATED AS FOLLOWS:

SECTION 50 OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT EVIDENCE OF MEMBERSHIP IN A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION UNLESS THE EVIDENCE IS FILED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION. THE BOARD HAS ALWAYS REQUIRED STRICT COMPLIANCE WITH THIS RULE. ALSO THE BOARD HAS INTERPRETED THE WORDS "AN APPLICATION FOR CERTIFICATION" AS MEANING EVIDENCE OF MEMBERSHIP FILED IN THE PARTICULAR APPLICATION FOR CERTIFICATION BEFORE IT. (SEE E & M LATHING CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 209).



5. EVEN THOUGH THE BOARD IS PREPARED TO FIND THAT THE CARDS WERE NOT TRANSFERRED THROUGH MISADVENTURE AND THAT THE APPLICANT HAD ASSUMED THAT THEY WERE TRANSFERRED, SINCE THE BOARD HAS ALWAYS REQUIRED STRICT COMPLIANCE WITH SECTION 50 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS NOT PREPARED TO EXTEND THE TERMINAL DATE IN THIS MATTER IN ORDER TO PERMIT THE CARDS TO BE TRANSFERRED.

6. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 27TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINED UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. THE APPLICATION IS THEREFORE DISMISSED.

13678-67-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADA SAND PAPERS LIMITED (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION A.F.L. - C.I.O. - C.L.C., ON BEHALF OF ITS LOCAL 652 (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: M. A. HEELEY FOR THE APPLICANT, DOUGLAS A. ALEXANDER FOR THE RESPONDENT, AND ROBERT W. STEWART AND KENNETH HAYCOCK FOR THE INTERVENER.

DECISION OF THE BOARD: NOVEMBER 28, 1967.

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2. AT THE HEARING IN THIS MATTER AN ADJOURNMENT WAS GRANTED AT THE REQUEST OF THE INTERVENER. THE INTERVENER ALSO REQUESTED THAT THE APPLICANT BE DIRECTED TO FILE PARTICULARS OF CERTAIN "CHARGES" IT HAD MADE RELATING TO THE ADEQUACY OF THE INTERVENER'S REPRESENTATION OF CERTAIN OF THE EMPLOYEES OF THE RESPONDENT.

3. THE APPLICANT SEEKS CERTIFICATION FOR A BARGAINING UNIT CONSISTING OF STATIONARY ENGINEERS AND HELPERS. BY THE PROVISIONS OF SECTION 6 SUBSECTION 2 OF THE LABOUR RELATIONS ACT, WHERE AN APPLICATION IS MADE WITH RESPECT TO A GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART

FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT, ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, PERTAINS TO SUCH SKILLS OR CRAFT, THE BOARD SHALL DEEM SUCH A GROUP OF EMPLOYEES TO CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT. THE CONCLUDING WORDS OF SUBSECTION 2, HOWEVER, CONTAIN THE PROVISIO THAT THE BOARD SHALL NOT BE REQUIRED TO APPLY SUBSECTION 2 WHERE A GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

4. THE EMPLOYEES AFFECTED BY THE INSTANT APPLICATION ARE IN FACT REPRESENTED BY THE INTERVENER AND WERE SO REPRESENTED AT THE TIME THIS APPLICATION WAS MADE. WHERE, IN THESE CIRCUMSTANCES, AN INTERVENER OBJECTS TO AN APPLICATION BY A "CRAFT" UNION (SUCH AS THE APPLICANT IN THE INSTANT CASE) TO REPRESENT A PART OF ITS BARGAINING UNIT, THE BOARD'S PRACTICE HAS BEEN TO HEAR EVIDENCE RELATING TO THE HISTORY OF THE INCUMBENT UNION'S REPRESENTATION OF THESE EMPLOYEES. IT IS NOT NECESSARY FOR THE APPLICANT, AS SUCH TO FILE ANY "CHARGES" RELATING TO THE ADEQUACY OF THE INTERVENER'S REPRESENTATION OF EMPLOYEES. IT IS RATHER INCUMBENT UPON THE INTERVENER, OR ANY OTHER PARTY OPPOSING THE APPLICATION, TO MAKE OUT A CASE IN SUPPORT OF ITS OBJECTION. THE APPLICANT WOULD THEN BE ENTITLED TO ADDUCE EVIDENCE IN ANSWER TO THE OBJECTOR'S CASE, SUBJECT OF COURSE TO THE RIGHT OF REPLY BY OTHER PARTIES. THIS PROCEDURE HAS BEEN FOLLOWED BY THE BOARD CONSISTENTLY IN SUCH CASES. AS AN EXAMPLE, REFERENCE IS MADE TO THE DUPONT OF CANADA CASE, BOARD FILE NO. 9406-64-R.

5. THE RESPONDENT AND THE INTERVENER WERE, OF COURSE, GIVEN NOTICE OF THE INSTANT APPLICATION. IT WAS OPEN TO THEM TO OBJECT TO THE APPLICATION, AND IT WAS INCUMBENT ON ANY PARTY TAKING OBJECTION TO ATTEND AT THE HEARING, PREPARED TO ESTABLISH THE GROUNDS OF ITS OBJECTION. THE BOARD WILL MAKE A DETERMINATION AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT HAVING REGARD TO THE PROVISIONS OF SECTION 6 OF THE ACT, AND UPON A CONSIDERATION OF ALL OF THE RELEVANT EVIDENCE.

6. THE REGISTRAR IS DIRECTED TO LIST THE MATTER FOR CONTINUATION OF HEARING. THE BOARD MAKES NO DIRECTION WITH RESPECT TO THE FURNISHING OF PARTICULARS BY ANY PARTY.

13681-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CANADIAN MOULDINGS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON:

APPEARANCES AT HEARING: KENNETH SIMPSON AND ROBERT WHITE FOR THE APPLICANT, HAROLD J. O'BRIEN AND DOUGLAS LAMBERT FOR THE RESPONDENT, AND KENNETH R. BELL AND EDMOND J. GODIN FOR A GROUP OF EMPLOYEES.

DECISION OF J.F.W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER  
P.J. O'KEEFE: NOVEMBER 29, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
3. THE BOARD FINDS THAT THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880, HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS ANY OF THE EMPLOYEES IN THE BARGAINING UNIT.
4. AT THE HEARING IN THIS MATTER, THE BOARD HEARD EVIDENCE RELATING TO THE ORIGINATION AND CIRCULATION OF A PETITION SIGNED BY CERTAIN OF THE EMPLOYEES OF THE RESPONDENT AND INDICATING THEIR OPPOSITION TO THE APPLICATION. THE BOARD'S CONCERN IN SUCH CASES IS TO BE SATISFIED THAT THE DOCUMENT IN QUESTION REPRESENTS A VOLUNTARY EXPRESSION OF THE WISHES OF THE SIGNATORIES. IN THE INSTANT CASE, THE "PETITION" WAS CIRCULATED FOLLOWING A MEETING OF WHAT APPEARS TO HAVE BEEN AN INFORMALLY ORGANIZED EMPLOYEES' ASSOCIATION, HELD DURING WORKING HOURS AND WITH THE CONSENT OF THE EMPLOYER (IN CONFORMITY WITH AN ESTABLISHED PLANT PRACTICE). IMMEDIATELY BEFORE THE EMPLOYEES' MEETING COMMENCED, THE EMPLOYEES HAD BEEN ADDRESSED BY OFFICIALS OF THE RESPONDENT. THESE OFFICIALS WERE ABSENT DURING THE EMPLOYEES' MEETING, BUT WERE PRESENT FOLLOWING THE MEETING, AND MINGLED WITH EMPLOYEES. WE DO NOT CONCLUDE THAT THE PETITION ITSELF WAS MANAGEMENT-INSPIRED, NOR DOES ANY QUESTION ARISE AS TO THE GOOD FAITH OF THE EMPLOYEES WHO INSTITUTED THE PETITION. IN THE CIRCUMSTANCES OF THIS CASE, HOWEVER, WE CANNOT CONCLUDE THAT THE DOCUMENT CASTS SUCH DOUBT ON THE APPLICANT'S EVIDENCE OF MEMBERSHIP AS TO LEAD THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.
5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 3RD, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77 (2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.
6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: NOVEMBER 29, 1967.

I CONCUR WITH THE FINDING OF MY COLLEAGUES THAT THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS

OF AMERICA, LOCAL 880, HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS ANY OF THE EMPLOYEES IN THE BARGAINING UNIT.

I DISSENT, HOWEVER, FROM THEIR FINDING THAT THE "PETITION" DOES NOT REPRESENT A VOLUNTARY EXPRESSION OF THE WISHES OF THE SIGNATORIES.

THE EVIDENCE ESTABLISHES THAT FOR SOME PERIOD OF TIME PRIOR TO THIS APPLICATION FOR CERTIFICATION, THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT HAD OPERATED AN EMPLOYEES ASSOCIATION AT THE PLANT OF CANADIAN MOULDINGS LIMITED. THE ORIGINATORS OF THE PETITION WERE THE OFFICERS OF THAT ASSOCIATION. FOR SOME TIME, THE MANAGEMENT OF THE COMPANY HAD GRANTED CERTAIN FREE TIME TO THE EMPLOYEES DURING THEIR WORKING HOURS IN ORDER THAT THEY MIGHT MEET AND DISCUSS THEIR WORKING CONDITIONS.

THE EVIDENCE FURTHER ESTABLISHES THAT PRIOR TO THIS APPLICATION, CERTAIN EMPLOYEES WERE LAID OFF BY THE COMPANY. AS A RESULT OF SUCH LAY-OFFS, AND IN ACCORDANCE WITH HIS DUTIES AS THE CHAIRMAN OF THE SHOP COMMITTEE OF THE ASSOCIATION, ONE, KENNETH BELL, APPROACHED THE MANAGEMENT OF THE COMPANY, AND, IN HIS OWN WORDS, "DEMANDED" AN EXPLANATION BE GIVEN TO THE REMAINING EMPLOYEES AS TO THE REASONS FOR THE LAY-OFFS.

A MEETING WAS CALLED OF THE EMPLOYEES, AND THE MANAGEMENT OF THE COMPANY GAVE ITS REASONS FOR THE LAY-OFFS. AFTER GIVING ITS EXPLANATION, THE MANAGEMENT LEFT THE MEETING, AND THE OFFICERS OF THE ASSOCIATION HELD AN ADDITIONAL MEETING WITH THE EMPLOYEES. THE LATTER MEETING WAS IN ACCORDANCE WITH THE ACCEPTED ROUTINE WHICH PREVAILED AT THIS COMPANY.

THE EMPLOYEES AT THIS LATTER MEETING DISCUSSED WHETHER OR NOT THEY SHOULD GRIEVE WITH RESPECT TO THE LAY-OFFS, AND DURING THE COURSE OF THESE DISCUSSIONS, MENTION WAS MADE BY EMPLOYEES THAT THE APPLICANT WAS ATTEMPTING TO ORGANIZE THE PLANT. THE MEETING AUTHORIZED KENNETH BELL TO INQUIRE INTO WHAT COULD BE DONE TO PREVENT THE CERTIFICATION OF THE APPLICANT UNION.

AS A RESULT OF SUCH AUTHORIZATION, BELL SOUGHT ADVICE FROM A PRACTICING LAWYER, WHO WAS A FRIEND OF HIS FAMILY, AND WHO SUGGESTED TO HIM THAT A PETITION OPPOSING THE CERTIFICATION MIGHT BE CIRCULATED AMONG THE EMPLOYEES.

AS A RESULT OF THIS ADVICE, BELL AND ANOTHER OFFICER OF THE ASSOCIATION PREPARED A PETITION IN BELL'S HOME, CALLED ANOTHER MEETING OF THE ASSOCIATION TO ADVISE THEM OF HIS PROGRESS, AND CIRCULATED THE PETITION AMONG THE EMPLOYEES. IT IS THIS PETITION UPON WHICH WE ARE ASKED TO ADJUDICATE.



MY COLLEAGUES IN THE MAJORITY DECISION ARE UNABLE TO CONCLUDE THAT THE PETITION WAS MANAGEMENT-INSPIRED OR THAT THERE WAS ANY BAD FAITH ON THE PART OF THE EMPLOYEES WHO INSTITUTED THE PETITION. HOW THEN DO THEY COME TO THE CONCLUSION THAT THE PETITION DOES NOT REPRESENT A VOLUNTARY EXPRESSION OF THE WISHES OF THE SIGNATORIES?

WITH RESPECT, I AM UNABLE TO FIND ANY EVIDENCE TO SUGGEST THAT THE EMPLOYEES WERE NOT VOLUNTARILY SIGNIFYING THEIR INTENTIONS IN THE PETITION FILED. INDEED, THERE HAVE BEEN CASES BEFORE THIS BOARD WHERE MANAGEMENT HAS SPECIFICALLY TOLD EMPLOYEES THAT THEY HAVE THE RIGHT TO CIRCULATE A PETITION IN OPPOSITION TO THE UNION. THE BOARD HAS SAID:

IT MAY BE THAT, AT THE TIME THEY AFFIXED THEIR SIGNATURES TO THE PETITION, THE EMPLOYEES WERE AWARE OF, AND TOOK INTO ACCOUNT, THE APPARENT FACTS OF THEIR EMPLOYER'S DISLIKE FOR THE OFFICIALS OF THE RESPONDENT TRADE UNION. IT DOES NOT FOLLOW FROM THIS, HOWEVER, THAT THE PETITION ITSELF MIGHT NOT CONSTITUTE A VOLUNTARY EXPRESSION OF THE EMPLOYEE'S WISHES.

COOPER-WEEKS LIMITED CASE, BOARD FILE NO. 13377-67-R.

IT IS DIFFICULT FOR ME TO RECONCILE THE CONTRASTING VIEWS OF THE MAJORITY IN THE LATTER CASE WITH THAT OF THE MAJORITY IN THE INSTANT CASE, WHERE NO MENTION OF A PETITION WAS EVER MADE BY MANAGEMENT.

THAT BEING SO, I WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED A REPRESENTATION VOTE OF THE EMPLOYEES IN THE BARGAINING UNIT.

13728-67-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (HEREINAFTER REFERRED TO AS IBEW) (APPLICANT) V. ELECTROHOME LIMITED (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #1) V. AMALGAMATED WORKERS UNION (INTERVENER #2).

- AND -

13737-67-R: CANADIAN UNION OF OPERATING ENGINEERS (HEREINAFTER REFERRED TO AS CUOE) (APPLICANT) V. ELECTROHOME LIMITED (RESPONDENT) V. AMALGAMATED WORKERS UNION (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING OF THE APPLICATION MADE BY THE CUOE: M. A. HEELEY FOR THE CUOE, WARREN K. WINKLER AND MAURICE MONTEITH FOR THE RESPONDENT, G. A. MACKEY, Q.C., ROBERT ABEL AND ARTHUR BALABAZUK FOR THE AMALGAMATED WORKERS UNION.

2. THE BOARD DIRECTS THAT THE ABOVE MATTERS BE CONSOLIDATED.

3. THE IBEW APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT, INCLUDING STATIONARY ENGINEERS AND HELPERS, AT KITCHENER WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT ON OCTOBER 6TH, 1967 AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE TERMINAL DATE FIXED FOR THAT APPLICATION WAS OCTOBER 17TH, 1967.

4. THE CUOE APPLIED TO BE CERTIFIED FOR ALL STATIONARY ENGINEERS AND THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT KITCHENER ON OCTOBER 10TH, 1967.

5. SINCE THE APPLICATION OF CUOE WAS MADE PRIOR TO THE TERMINAL DATE OF THE APPLICATION OF IBEW AND SINCE THE EMPLOYEES FOR WHOM THE CUOE HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT ARE INCLUDED IN THE UNIT OF EMPLOYEES FOR WHOM IBEW SEEK CERTIFICATION, THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 77(3)(A) OF THE LABOUR RELATIONS ACT DIRECTS THAT THE APPLICATION OF CUOE BE TREATED AS HAVING BEEN MADE ON OCTOBER 6TH, 1967, THE DATE OF MAKING OF THE APPLICATION BY IBEW.

6. THE CUOE HAS APPLIED FOR A UNIT OF STATIONARY ENGINEERS AND HELPERS AND HAS RELIED UPON THE BOARD'S OFFICIAL KNOWLEDGE OF THE HISTORY OF REPRESENTATION OF THIS CRAFT BY THE CUOE. THE CUOE OFFERED NO EVIDENCE OF THE FAILURE OF THE AMALGAMATED WORKERS UNION, THE INCUMBENT TRADE UNION, TO FAIRLY REPRESENT THE STATIONARY ENGINEERS AND HELPERS BUT HAS RELIED UPON THE REASONING OF THE BOARD CONTAINED IN THE BOARD'S DECISION IN DARLING AND COMPANY OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 501. IT WAS THE POSITION OF THE CUOE THAT THE DISCRETIONARY PROVISIONS CONTAINED IN SECTION 6(2) OF THE ACT WOULD NOT BE APPLICABLE IF THE IBEW SUCCEEDED IN DISPLACING THE INCUMBENT UNION. IF THE IBEW WERE SUCCESSFUL THE SITUATION WITH RESPECT TO THE STATIONARY ENGINEERS AND HELPERS WOULD BE SUBSTANTIALLY ALTERED IN THAT THERE WOULD BE NO EXTENSIVE BARGAINING HISTORY BETWEEN THE IBEW AND THE RESPONDENT COVERING THE STATIONARY ENGINEERS AND HELPERS. ACCORDINGLY, THE CUOE ARGUED THAT IF THERE WERE NO EXTENSIVE HISTORY OF REPRESENTATION BY THE IBEW OF THE STATIONARY ENGINEERS AND HELPERS THERE WOULD BE NOTHING UPON WHICH THE BOARD COULD ACT IN ORDER TO EXERCISE ITS DISCRETION AGAINST THE CUOE UNDER SECTION 6(2) OF THE ACT.

7. WHILE THE RESPONDENT AND THE INCUMBENT UNION AGREED TO THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER; THEY REQUESTED THAT THE BALLOT BOX CONTAINING THE BALLOTS CAST IN ANY VOTE INVOLVING THE CUOE BE SEALED IN ORDER THAT THE RESPONDENT AND THE INCUMBENT WOULD HAVE THE OPPORTUNITY AT A LATER DATE TO MAKE REPRESENTATIONS ON THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE CUOE.

8. ALL THE MEMBERSHIP DOCUMENTS SUBMITTED BY THE CUOE WERE DATED PRIOR TO OCTOBER 6TH, 1967.

9. ON THE APPLICATION BY THE IBEW WHEREIN THE IBEW REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN, TWENTY-THREE OF THE RECEIPTS WHICH WERE ATTACHED TO THE MEMBERSHIP DOCUMENTS SUBMITTED BY THE IBEW WERE DATED SUBSEQUENT TO OCTOBER 6TH, 1967. THE RESPONDENT AND THE INCUMBENT MADE ALLEGATIONS CONCERNING THE TIMELINESS OF SOME OF THESE MEMBERSHIP CARDS. SINCE THE SAID TWENTY-THREE APPLICATION AND RECEIPT CARDS BORE A DATE SUBSEQUENT TO THE DATE OF THE MAKING OF THIS APPLICATION, NONE OF THE TWENTY-THREE MEMBERSHIP DOCUMENTS WERE CONSIDERED BY THE BOARD FOR THE PURPOSE OF DETERMINING THE MEMBERSHIP POSITION OF THE IBEW. IN ADDITION, THE IBEW ADVISED THE BOARD THAT IT HAD COME TO ITS ATTENTION THAT THERE WERE "SOME IRREGULARITIES" IN CONNECTION WITH ONE OF THE MEMBERSHIP CARDS WHICH WAS INCLUDED AMONG THE TWENTY-THREE LATE CARDS, AND THE IBEW REQUESTED LEAVE TO WITHDRAW THE CARD IN QUESTION. AS STATED ABOVE, NO CONSIDERATION HAS BEEN GIVEN BY THE BOARD TO ANY OF THE TWENTY-THREE LATE CARDS, INCLUDING THE IRREGULAR CARD ABOVE REFERRED TO.

10. THE INCUMBENT ALSO ALLEGED THAT TWO PERSONS NAMED BY THE INCUMBENT DID NOT PAY \$1.00 ON ACCOUNT OF INITIATION FEE TO THE IBEW. IF EITHER OF THESE TWO PERSONS ARE CLAIMED BY THE IBEW AS MEMBERS, THE BOARD WILL MAKE ITS USUAL PRELIMINARY INQUIRY INTO THESE ALLEGATIONS AND, IF WARRANTED, WILL DIRECT A HEARING TO INQUIRE FURTHER INTO ALL THE CIRCUMSTANCES SURROUNDING THE MANNER IN WHICH THE MEMBERSHIP DOCUMENTS OF THE TWO PERSONS CAME TO BE SIGNED AND WHETHER ANY MONEY WAS PAID BY THEM OR ON THEIR BEHALF, IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE.

11. THE ALLEGATIONS WERE ALSO MADE AGAINST THE IBEW CONCERNING MEMBERSHIP CARDS SUBMITTED TO THE BOARD AFTER THE IBEW HAD BEEN ADVISED THAT THE PERSONS WHO HAD SIGNED THE CARDS HAD LATER WITHDRAWN THEIR MEMBERSHIP. THIS ISSUE WAS DEALT WITH BY THE BOARD IN THE CALDWELL LINEN MILLS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1967, P. 948. IN THAT CASE, THE BOARD DETERMINED THAT REVOCATIONS OF MEMBERSHIP MUST BE TREATED IN THE SAME MANNER AS PETITIONS AGAINST AN APPLICANT UNION. WHILE THE WITHDRAWALS OF MEMBERSHIP CAST DOUBT ON MEMBERSHIP EVIDENCE FILED BY THE IBEW, THIS DOUBT WILL BE RESOLVED ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE.

12. THE BOARD THEREFORE DETERMINES THAT THERE SHOULD BE A REPRESENTATION VOTE BETWEEN THE IBEW AND THE AMALGAMATED WORKERS UNION OF ALL THE EMPLOYEES REPRESENTED BY THE AMALGAMATED WORKERS UNION. IF THE IBEW ARE SUCCESSFUL IN DISPLACING THE AMALGAMATED WORKERS UNION AS A RESULT OF THAT REPRESENTATION VOTE THEN A FURTHER REPRESENTATION VOTE IS TO BE HELD TO PERMIT THE STATIONARY ENGINEERS AND HELPERS EMPLOYED BY THE RESPONDENT AT KITCHENER TO DECIDE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE IBEW OR THE CUOE.

13. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE IBEW AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE IBEW AT THE TIME THE APPLICATION WAS MADE.

14. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL HOURLY RATED EMPLOYEES IN THE RESPONDENT'S PLANTS AT KITCHENER, SAVE AND EXCEPT OFFICE STAFF, GUARDS, PERSONS HAVING THE AUTHORITY TO HIRE OR DISCHARGE, PART-TIME EMPLOYEES HIRED ON A BASIS OF 24 HOURS PER WEEK OR LESS AND SUMMER STUDENTS HIRED AS TEMPORARY EMPLOYEES.  
(HEREINAFTER REFERRED TO AS VOTING CONSTITUENCY #1)

15. ALL EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #1 ON OCTOBER 17TH, 1967 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 17TH DAY OF OCTOBER, 1967 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #1.

16. VOTERS WILL BE GIVEN A CHOICE BETWEEN LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) AND AMALGAMATED WORKERS UNION IN VOTING CONSTITUENCY #1.

17. IT FURTHER APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE CUOE AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE CUOE AT THE TIME THE APPLICATION WAS MADE.

18. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT KITCHENER, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER.  
(HEREINAFTER REFERRED TO AS VOTING CONSTITUENCY #2)

19. ALL EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #2 ON OCTOBER 17TH, 1967 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 17TH DAY OF OCTOBER, 1967 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #2.



20. VOTERS WILL BE GIVEN A CHOICE BETWEEN LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) AND CANADIAN UNION OF OPERATING ENGINEERS IN VOTING CONSTITUENCY #2.

21. THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING THE BALLOTS CAST IN THE REPRESENTATION VOTE IN VOTING CONSTITUENCY #2 SHALL BE SEALED AND THE BALLOTS SHALL NOT BE COUNTED UNLESS IT IS FIRST DETERMINED, FOLLOWING THE COUNTING OF THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN VOTING CONSTITUENCY #1, THAT LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) HAVE OBTAINED IN EXCESS OF FIFTY PER CENT OF THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #1. IN ADDITION, THE BALLOTS SHALL NOT BE COUNTED IN VOTING CONSTITUENCY #2 UNTIL THE BOARD HAS HEARD THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE CANADIAN UNION OF OPERATING ENGINEERS.

22. IN ARRIVING AT ITS DECISION THE BOARD HAS TAKEN INTO ACCOUNT THE CONCLUDING WORDS OF SECTION 6(1) OF THE ACT WHEREIN THE BOARD MAY ASCERTAIN THE WISHES OF THE EMPLOYEES OF THE RESPONDENT AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT IN THESE MATTERS.

23. THESE MATTERS ARE REFERRED TO THE REGISTRAR.

13765-67-R: NURSES' ASSOCIATION THE HAMILTON AND DISTRICT SCHOOL OF NURSING (APPLICANT) v. THE HAMILTON AND DISTRICT SCHOOL OF NURSING (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: D. F. O. HERSEY, MISS KATHLEEN HARTFORD AND MISS ANNE S. GRIBBEN FOR THE APPLICANT, AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 16, 1967.

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2. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT ASSOCIATE DIRECTORS AND PERSONS ABOVE THE RANK OF ASSOCIATE DIRECTOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. AN EXAMINATION OF THE CONSTITUTION FILED BY THE APPLICANT RAISES SOME QUESTIONS AS TO THE RIGHT OF CERTAIN PERSONS COMING WITHIN THE BARGAINING UNIT, DESCRIBED ABOVE, TO BECOME MEMBERS OF THE APPLICANT. ARTICLE 3 OF THE APPLICANT'S CONSTITUTION IS AS FOLLOWS:-

MEMBERSHIP IS OPEN TO ALL REGISTERED NURSES WHO ARE EMPLOYED BY THE EMPLOYER ON A FULL-TIME OR ON A PART-TIME BASIS.

ALTHOUGH THERE ARE AT PRESENT NO "GRADUATE NURSES" IN THE EMPLOY OF THE RESPONDENT, NEVERTHELESS, IT WOULD APPEAR THAT ANY SUCH PERSON WHO MIGHT BE EMPLOYED WOULD NOT BE ELIGIBLE FOR MEMBERSHIP IN THE APPLICANT, ALTHOUGH THEY WOULD COME WITHIN THE BARGAINING UNIT DESCRIBED ABOVE. THE BOARD HAS CONSISTENTLY HELD THAT A TRADE UNION WHICH CANNOT OR WILL NOT ACCEPT INTO MEMBERSHIP ANY PERSON COMING WITHIN THE BARGAINING UNIT, SHALL NOT BE CERTIFIED AS BARGAINING AGENT FOR EMPLOYEES IN SUCH UNIT.

4. IT WOULD APPEAR, FROM THE MATERIAL NOW BEFORE THE BOARD, THAT THE APPLICANT IS NOT ENTITLED TO CERTIFICATION WITH RESPECT TO THE BARGAINING UNIT DESCRIBED ABOVE. THIS MATTER, HOWEVER, WAS NOT RAISED AT THE HEARING, AND THE PARTIES WOULD BE ENTITLED TO MAKE REPRESENTATIONS TO THE BOARD WITH RESPECT TO IT. THE BOARD WILL, THEREFORE, LIST THIS MATTER FOR CONTINUATION OF HEARING IF A REQUEST TO THAT EFFECT IS MADE NOT LATER THAN SEVEN DAYS FOLLOWING THE ISSUING OF THIS ENDORSEMENT. IN THE ABSENCE OF SUCH REQUEST, THE BOARD WILL DEAL WITH THE MATTER ON THE BASIS OF THE EVIDENCE THEN BEFORE IT.

13778-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (APPLICANT) V. JULES FINE ENTERPRISES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: TOM CORRIGAN AND GIL DAVIS FOR THE APPLICANT, S. R. ELLIS AND M. GREENBERG FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 8, 1967.

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2. THE APPLICANT HAS APPLIED FOR A UNIT COMPRISED OF "ALL CAR JOCKEYS OF THE RESPONDENT LOCATED AT JULIES RESTAURANT & TAVERN AT 515 JARVIS STREET, TORONTO" WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

WHILE THE RESPONDENT SUBMITTED A LIST OF FOUR PERSONS IN THE UNIT PROPOSED BY THE APPLICANT THE RESPONDENT HAS A TOTAL OF APPROXIMATELY FIFTY-EIGHT EMPLOYEES WHO ARE ELIGIBLE FOR COLLECTIVE BARGAINING.

3. THE APPLICANT WAS UNABLE TO SHOW ANY HISTORY OF REPRESENTATION OF "CAR JOCKEYS" AS A CRAFT BARGAINING UNIT, AND, ACCORDINGLY, THE APPLICANT CANNOT QUALIFY UNDER SECTION 6(2) OF THE ACT FOR CRAFT STATUS. THERE IS NO EVIDENCE THAT CAR JOCKEYS HAD EVER BEEN REPRESENTED SEPARATELY AND APART FROM OTHER EMPLOYEES IN COMPANIES CARRYING ON BUSINESS SIMILAR TO THE RESPONDENT. THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY IT THAT A UNIT COMPRISED OF ALL CAR JOCKEYS OF THE RESPONDENT WOULD BE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 31ST, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. THE APPLICATION IS THEREFORE DISMISSED.

13791-67-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION, No. 10 (APPLICANT) V. NU-BAR LITHO PLATE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: IAN SCOTT FOR THE APPLICANT,  
JAMES D. L. ROSS, NUBAR KARADJIAN, FOR THE RESPONDENT,  
PAUL H. WARD, KEN MCCOLGAN FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: NOVEMBER 17, 1967.

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4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT TORONTO EMPLOYED IN OFFSET PREPARATORY OPERATIONS, INCLUDING CAMERAMEN, PLATEMAKERS, FILM ASSEMBLERS (STRIPPERS) AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THERE WAS FILED IN THIS MATTER A DOCUMENT IN OPPOSITION TO THIS APPLICATION WHICH WAS SIGNED BY FOUR PERSONS ALL OF WHOM ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. THE APPLICANT CLAIMED AS MEMBERS THE FOUR PERSONS WHO SIGNED THE PETITION. IF FULL EFFECT WERE GIVEN TO THE DOCUMENT, SUFFICIENT DOUBT WOULD BE CAST ON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT SO THAT THE BOARD WOULD DIRECT A REPRESENTATION VOTE BE TAKEN IN THIS MATTER. THE BOARD ACCORDINGLY MADE INQUIRIES WITH RESPECT TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION AND ALSO CONSIDERED THE CHARGES FILED BY THE APPLICANT RELATING TO THE PETITION.

6. IN CONSIDERING A PETITION FROM EMPLOYEES WHICH IS OFFERED BY THEM TO WEAKEN THE MEMBERSHIP EVIDENCE OF AN APPLICANT, THE BOARD MUST BE SATISFIED BY ORAL TESTIMONY THAT THE PETITION REPRESENTS THE TRUE WISHES OF THOSE PERSONS SIGNING THE DOCUMENT AND THAT IT HAS NOT COME TO THE BOARD AS A RESULT OF ANY IMPROPER EFFORTS BY THEIR EMPLOYER. IN THE FLECK MANUFACTURING CASE, 62 CLLC 1946; CLS 76-860 AT P. 76-863, THE BOARD STATED AS FOLLOWS:

"... WHAT THE BOARD SEEKS AMONG OTHER THINGS IS SATISFACTORY ASSURANCE FROM WITNESSES WHO TESTIFY FROM PERSONAL KNOWLEDGE THAT THE SIGNATURES OF THE EMPLOYEES ON THE DOCUMENT TRULY REFLECTS THEIR VOLUNTARY WISHES CONCERNING REPRESENTATION BY THE UNION AND THAT MANAGEMENT HAS NOT IMPROPERLY INFLUENCED THEM IN ANY WAY."

7. IN THE INSTANT CASE, IT IS APPARENT FROM THE EVIDENCE THAT THE EMPLOYER DID ATTEMPT TO INFLUENCE THE EMPLOYEES CONCERNED IN CONNECTION WITH THE APPLICATION FOR CERTIFICATION. IN REPLY TO QUESTIONS DIRECTED BY THE BOARD BOTH MR. WARD AND MR. MCCOLGAN STATED THAT THEY HAD NOT DISCUSSED EITHER THE PETITION OR THE APPLICANT UNION WITH MANAGEMENT. IN SUBSEQUENT TESTIMONY, HOWEVER, MR. MCCOLGAN TOLD THE BOARD THAT FOLLOWING THE POSTING OF THE NOTICE OF APPLICATION FOR CERTIFICATION IN THE PLANT, HE AND MR. WARD, ON THE INVITATION OF MR. CHESEBOROUGH ATTENDED A MEETING WITH HIM AT THE RESPONDENT'S OFFICE AFTER 4:30 ON THAT DAY. THE FOLLOWING DAY, MR. CHESEBOROUGH INVITED MR. MCCOLGAN AND ANY OTHER EMPLOYEES HE WISHED TO BRING TO MEET WITH HIM AGAIN. IN THE MORNING OF THAT DAY AND DURING WORKING HOURS MR. MCCOLGAN, MR. O'BRIEN AND MR. LEBLANC MET WITH MR. CHESEBOROUGH AT THE PREMISES OF MILNE BINGHAM LIMITED. AT BOTH MEETINGS, ACCORDING TO MR. MCCOLGAN, THE APPLICATION FOR CERTIFICATION WAS MENTIONED AND MR. CHESEBOROUGH INQUIRED AS TO THEIR REASONS FOR JOINING THE APPLICANT UNION AND INDICATED HIS PREFERENCE OF A UNION OTHER THAN THE APPLICANT. SUBSEQUENTLY, MR. MCCOLGAN PREPARED THE PETITION AND HAD IT SIGNED THAT NIGHT AT THE RESPONDENT'S PLANT BY HIMSELF, MR. WARD AND TWO OTHER EMPLOYEES. MR. MCCOLGAN, ALTHOUGH PREVIOUSLY ADVISING THE BOARD THAT ONLY ONE PETITION WAS PREPARED, LATER TESTIFIED THAT THE FIRST DOCUMENT WAS DESTROYED AND THAT HE PREPARED A SECOND SO THAT HE COULD MAKE A CARBON COPY OF THE PETITION.



THE SECOND PETITION WAS PREPARED IN THE MORNING, IN THE RESPONDENT'S OFFICE DURING WORKING HOURS. MR. O'BRIEN TESTIFIED THAT HE HAD SIGNED A DOCUMENT MORE THAN ONCE AND THAT MR. MCCOLGAN HAD REQUESTED HIM TO SIGN THE SECOND DOCUMENT IN THE STRIPPING ROOM AT WHICH TIME MR. KARADJIAN, THE PRESIDENT OF THE RESPONDENT, WAS PRESENT.

8. COUNSEL FOR THE RESPONDENT TESTIFIED THAT MR. CHESEBOROUGH IS NOT AN OFFICER OR DIRECTOR OF THE RESPONDENT BUT IS THE PRESIDENT AND OWNER OF MILNE BINGHAM LIMITED WHICH IN TURN HOLDS SUBSTANTIAL SHARE HOLDINGS IN THE RESPONDENT. MR. CHESEBOROUGH COUNTER-SIGNS CHEQUES OF THE RESPONDENT AND GIVES ADVICE TO THE RESPONDENT ON A DAY TO DAY BASIS. HENCE, IT IS LOGICAL TO INFER THAT THE EMPLOYEES IN THE RESPONDENT WOULD CONSIDER HIM AS PART OF THE MANAGEMENT OF THE RESPONDENT. IT SEEMS CLEAR FROM THE EVIDENCE THAT THE RESPONDENT TOOK AN ACTIVE PART IN THE MANNER IN WHICH THE PETITION ORIGINATED AND THAT THEREFORE THE MOST RELIABLE EVIDENCE OF THE TRUE DESIRES OF THE EMPLOYEES IN THIS CASE IS TO BE FOUND IN THEIR APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT UNION.

9. HAVING REGARD FOR ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES PRESENTED AT THE HEARING, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 3RD, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13797-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE METROPOLITAN GENERAL HOSPITAL (RESPONDENT) v. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: A. RISELEY AND W. A. ACTON FOR THE APPLICANT, W. L. MCGREGOR, Q.C., J. ROGERS AND J. REEVES FOR THE RESPONDENT, N. HARPER AND H. PEELING FOR THE INTERVENER.

DECISION OF THE BOARD: NOVEMBER 16, 1967.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED AUGUST 15TH, 1967, PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 102, WHICH EXPIRED ON JULY 31ST, 1967, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 20 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT PROVIDES FOR THE EXCLUSION OF PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 20 HOURS PER WEEK. THE BOARD, ACCORDINGLY, FOR PURPOSES OF CONSISTENCY, HAS MADE THE SAME EXCLUSION FROM THE INSTANT BARGAINING UNIT.

5. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, MEDICAL SOCIAL WORKERS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS, OPERATING ROOM TECHNICIANS, CASE ROOM TECHNICIANS AND ISOTOPE TECHNICIANS.

6. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT WARD CLERKS ARE PART OF THE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

7. ON THE LIST FILED BY THE RESPONDENT THERE ARE PERSONS IN THE OCCUPATIONAL CLASSIFICATIONS OF PHARMACY PORTER, PHYSIOTHERAPY ATTENDANT, LABORATORY ASSISTANT AND MALE ATTENDANT II. WHILE THESE OCCUPATIONAL CLASSIFICATIONS ARE NOT SPECIFICALLY EXCLUDED FROM THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT, THE INTERVENER HAS NOT REPRESENTED THESE OCCUPATIONAL CLASSIFICATIONS IN ITS BARGAINING RELATIONSHIP WITH THE RESPONDENT. THE BOARD ACCORDINGLY FINDS THAT THE INTERVENER HAS ABANDONED ANY BARGAINING RIGHTS IT MAY HAVE HELD FOR THEM AND THAT THE ABOVE OCCUPATIONAL CLASSIFICATIONS ARE INCLUDED IN THE BARGAINING UNIT.

8. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT REGISTERED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE,

WERE MEMBERS OF THE APPLICANT ON NOVEMBER 7TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13798-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)  
V. CANADIAN HANSON & VAN WINKLE COMPANY, LIMITED (RESPONDENT) V.  
GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: IAN SCOTT, E. CALANDRO AND R. BARRETT FOR THE APPLICANT, D. CHURCHILL-SMITH, V. L. RICHARDS AND E. A. SMITH FOR THE RESPONDENT, W. J. HEMMERICK, Q.C., FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 16, 1967.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE BOROUGH OF ETOBICOKE WITH CERTAIN EXCEPTIONS WHICH WILL BE DEALT WITH LATER. THE RESPONDENT SUBMITS THAT THE APPROPRIATE BARGAINING UNIT SHOULD INCLUDE NOT ONLY THE EMPLOYEES OF THE RESPONDENT AT ITS ETOBICOKE PLANT BUT ALSO THOSE EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS FOUNDRY IN THE CITY OF TORONTO.

4. AS A GENERAL POLICY THE BOARD HAS FOUND SINGLE PLANT UNITS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. WHERE AN EMPLOYER HAS MORE THAN ONE PLANT IN AN AREA, HOWEVER, THE BOARD WILL CONSIDER THE PARTICULAR CIRCUMSTANCES IN AN INDIVIDUAL CASE, TAKING INTO ACCOUNT SUCH FACTORS AS THE DEGREE OF INTERCHANGE OF EMPLOYEES OF THE TWO OR MORE PLANTS, THE COMMUNITY OF INTEREST OF THE EMPLOYEES AND THE ECONOMIC INTERDEPENDENCE OF THE EMPLOYER'S OPERATIONS, IN DETERMINING WHETHER A SINGLE UNIT ENCOMPASSING MORE THAN ONE PLANT IS AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

5. IN THE INSTANT CASE, THERE IS VIRTUALLY NO INTERCHANGE OF PRODUCTION PERSONNEL BETWEEN THE RESPONDENT'S PLANT AND FOUNDRY. ALTHOUGH AN ELECTRICIAN AND MECHANIC EMPLOYED AT THE PLANT PROVIDE MAINTENANCE SERVICE ON THE EQUIPMENT AT THE FOUNDRY AS REQUIRED THEY ARE PRIMARILY EMPLOYED AT THE PLANT. SIMILARLY, WHILE TRUCK DRIVERS EMPLOYED BY THE RESPONDENT, AS PART OF THEIR WORK, PICK UP

CASTINGS PRODUCED AT THE FOUNDRY AND PACKING BOXES MADE AT THE FOUNDRY WHICH THEY DELIVER TO THE PLANT, THEY WORK OUT OF THE PLANT. THE NATURE OF THE WORK PERFORMED BY THE EMPLOYEES OF THE RESPONDENT'S PLANT IS QUITE DISSIMILAR FROM THE WORK DONE BY EMPLOYEES AT THE FOUNDRY AND REQUIRE DIFFERENT SKILLS. APPROXIMATELY NINETY PER CENT OF THE RESPONDENT'S PRODUCTION OPERATIONS ARE CARRIED ON IN THE ETOBICOKE PLANT, THE REMAINING TEN PER CENT ARE CARRIED ON AT THE FOUNDRY. THE PRODUCTION OPERATIONS ARE LARGELY INDEPENDENT OF EACH OTHER. CASTINGS PRODUCED AT THE FOUNDRY ARE SHIPPED TO THE PLANT FOR FINISHING PRIOR TO BEING MARKETED, HOWEVER, THIS REPRESENTS ONLY ONE PER CENT OF THE RESPONDENT'S TOTAL VOLUME OF BUSINESS. AS IS QUITE USUAL, THERE IS A COMMON SENIOR MANAGEMENT FOR BOTH THE PLANT AND FOUNDRY AND THE ADMINISTRATIVE, SALES AND BOOKKEEPING FUNCTIONS ARE LARGELY INTEGRATED, THIS WORK BEING DONE FROM THE RESPONDENT'S OFFICE AT THE ETOBICOKE PLANT.

6. IN THE LIGHT OF THE VIRTUAL ABSENCE OF ANY INTERCHANGE OF PRODUCTION PERSONNEL, THE LACK OF A COMMUNITY OF INTEREST BY REASON OF THE TYPE OF WORK PERFORMED BY THE EMPLOYEES OF THE PLANT AND THE FOUNDRY, AND THE SEPARATE AND INDEPENDENT NATURE OF THE PRODUCTION OPERATIONS AT THE TWO LOCATIONS, DESPITE THE COMMON ADMINISTRATION, THE BOARD IS OF THE OPINION THAT A UNIT COMPOSED OF THE EMPLOYEES OF THE RESPONDENT AT ITS PLANT ALONE IS APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY DEPARTMENT STAFF, TECHNICAL AND ENGINEERING DEPARTMENT STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT J. BOYD AND P. NAHIRNIAJ ARE NOT INCLUDED IN THE BARGAINING UNIT.

9. THERE ARE 86 PERSONS ON SCHEDULES A AND D FILED BY THE RESPONDENT WHO WERE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AS OF THE DATE OF APPLICATION. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 56 PERSONS AS OF NOVEMBER 7TH, 1967, THE TERMINAL DATE ESTABLISHED IN THIS APPLICATION, WHICH IS THE DATE ON WHICH THE BOARD DETERMINES THE MEMBERSHIP POSITION OF THE APPLICANT. THE NAMES OF ALL OF THE PERSONS ON WHOSE BEHALF THE APPLICANT FILED EVIDENCE OF MEMBERSHIP CORRESPOND WITH THE NAMES OF THE BARGAINING UNIT EMPLOYEES APPEARING ON THE RESPONDENT'S LISTS.

10. THERE WAS ALSO FILED WITH THE BOARD, UNDER A COVERING LETTER DATED NOVEMBER 7TH, TWELVE SEPARATE HANDWRITTEN STATEMENTS OF DESIRE (HEREINAFTER REFERRED TO AS PETITIONS) EACH DATED NOVEMBER 2ND, 1967, SIGNED BY PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. ALL OF



THESE PERSONS ARE IN THE BARGAINING UNIT AND ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. SHOULD THE BOARD FIND THAT THE PETITIONS WEAKEN OR CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP SUBMITTED ON BEHALF OF THE EMPLOYEES CONCERNED, THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE FIFTY-FIVE PER CENT OF THE PERSONS IN THE BARGAINING UNIT REQUIRED FOR OUTRIGHT CERTIFICATION. THE PETITIONS ARE THEREFORE RELEVANT. ACCORDINGLY, THE BOARD PROPOSES TO CONDUCT ITS USUAL INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITIONS. (THE PETITIONS WERE ONLY IDENTIFIED AT THE HEARING ON NOVEMBER 14TH, 1967).

11. COUNSEL FOR THE APPLICANT AT THE HEARING REQUESTED LEAVE OF THE BOARD TO FILE CHARGES ALLEGING MANAGEMENT SUPPORT OF THE PETITIONS. COUNSEL ADVISED THE BOARD THAT HE ONLY LEARNED OF THE FILING OF THE PETITIONS BY A LETTER FROM THE REGISTRAR DATED NOVEMBER 8TH, 1967 WHICH WAS RECEIVED IN HIS OFFICE ON NOVEMBER 9TH. COUNSEL FURTHER ADVISED THE BOARD THAT UNTIL THAT TIME THE APPLICANT HAD NO KNOWLEDGE OF THE PETITIONS. ACCORDING TO COUNSEL, IN THE FOUR-DAY PERIOD BETWEEN RECEIVING NOTICE OF THE PETITIONS AND THE BOARD HEARING, THE APPLICANT MADE AN INVESTIGATION CONCERNING THE PETITIONS AND IS SATISFIED THAT THEY WERE MANAGEMENT INSPIRED. COUNSEL STATED THAT HIS CLIENT, HOWEVER, WAS NOT IN A POSITION TO FILE ITS CHARGES UNTIL THE BOARD HEARING. COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE GROUP OF EMPLOYEES BOTH OPPOSED THE REQUEST OF COUNSEL FOR THE APPLICANT.

12. THE BOARD HAS CONSIDERED THE REQUEST OF COUNSEL FOR THE APPLICANT AND THE REPRESENTATIONS OF ALL PARTIES TO THE PROCEEDINGS. IT WOULD HAVE BEEN DESIRABLE HAD COUNSEL FOR THE APPLICANT ADVISED THE BOARD IN ADVANCE OF THE HEARING OF HIS INTENTION TO REQUEST LEAVE OF THE BOARD TO FILE CHARGES. NEVERTHELESS, WE ARE SATISFIED THAT THE APPLICANT HAS ACTED WITH ALL REASONABLE DISPATCH IN MAKING ITS INQUIRIES CONCERNING THE PETITIONS UPON RECEIVING NOTICE OF THE FACT THAT THEY HAD BEEN FILED WITH THE BOARD. WE NOTE THAT TWO OF THE FOUR DAYS BETWEEN THE TIME WHEN THE APPLICANT LEARNED OF THE PETITIONS AND THE BOARD HEARING FELL ON A WEEK-END. IN ALL THE CIRCUMSTANCES, WE FIND THAT THE APPLICANT IS ENTITLED TO FILE ITS CHARGES AT THIS TIME.

13. THE BOARD ACCORDINGLY DIRECTS THAT COUNSEL FOR THE APPLICANT FILE HIS CHARGES WITH THE BOARD FORTHWITH INCLUDING ALL PARTICULARS OF THE ALLEGED IMPROPER CONDUCT OF THE RESPONDENT REQUIRED BY THE BOARD'S RULES OF PROCEDURE AND REGULATIONS.

14. THE BOARD FURTHER DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR A CONTINUATION OF HEARING FOR THE PURPOSE OF INQUIRING INTO THE PETITIONS AND FOR THE PURPOSE OF ENTERTAINING ANY CHARGES FILED BY THE APPLICANT RELATING TO THE PETITIONS.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

13857-67-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION,  
LOCAL 12-L (APPLICANT) V. MACLEAN-HUNTER PUBLISHING COMPANY LIMITED  
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: J. H. OSLER, Q.C., AND NORMAN H. GRAY  
FOR THE APPLICANT, WARREN K. WINKLER AND E. NYMARK FOR THE  
RESPONDENT, J. GOLDING, E. J. HAMILTON, F. G. PILCHER, G. F. ROSS,  
K. G. HACKENBROOK, N. S. CROMARTY, L. EDGAR, J. McDUGALL AND  
J. HEMPKIN FOR THE OBJECTORS.

DECISION OF THE BOARD:

NOVEMBER 28, 1967.

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3. THE BOARD FURTHER FINDS THAT ALL LITHOGRAPHERS, THEIR  
APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE  
BOROUGH OF NORTH YORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND  
PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT  
OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE  
PARTIES THAT LITHOGRAPHIC CAMERAMEN, STRIPPERS, PLATEMAKERS, PRESSMEN  
AND THEIR APPRENTICES AND HELPERS, LITHOGRAPHIC FEEDERS AND ROLLMEN  
ARE INCLUDED IN THE BARGAINING UNIT.

5. THE RESPONDENT FILED A LIST OF 44 PERSONS WHO WERE IN ITS  
EMPLOY AS OF THE DATE OF APPLICATION, ALL OF WHOM ARE INCLUDED IN  
THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT FILED  
EVIDENCE OF MEMBERSHIP ON BEHALF OF 25 PERSONS, ALL OF WHOSE NAMES  
APPEAR ON THE LIST FILED BY THE RESPONDENT. THERE WAS ALSO FILED  
WITH THE BOARD AN UNDATED STATEMENT OF DESIRE BEARING THE SIGNATURES  
OF 23 PERSONS AND TWO INDIVIDUAL STATEMENTS OF DESIRE EACH BEARING  
THE SIGNATURE OF ONE PERSON, ALL PURPORTING TO BE EMPLOYEES OF THE  
RESPONDENT AND EXPRESSING OPPOSITION TO THE APPLICATION. OF THE  
TOTAL OF 25 NAMES APPEARING ON THE STATEMENTS OF DESIRE (HEREINAFTER  
REFERRED TO AS PETITIONS) SIX ARE CLAIMED IN MEMBERSHIP BY THE  
APPLICANT. IF THE BOARD WERE TO FIND THAT THE PETITIONS WEAKEN OR  
QUALIFY THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, THE  
APPLICANT WOULD HAVE UNCONTESTED EVIDENCE FOR LESS THAN FIFTY-FIVE  
PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. THE PETITIONS  
THEREFORE WERE RELEVANT AND THE BOARD MADE ITS USUAL INQUIRIES  
WITH REGARD TO THEIR ORIGATION, PREPARATION AND CIRCULATION.

6. JOHN HEMPKIN, WHO IS AN EMPLOYEE OF THE RESPONDENT, GAVE THE  
FOLLOWING EVIDENCE REGARDING THE PETITION BEARING 23 SIGNATURES. HE  
SAW THE NOTICE TO EMPLOYEES (FORM 5) OF THE APPLICATION FOR CERTIFI-  
CATION WHICH HAD BEEN POSTED IN THE PLANT ON WEDNESDAY, NOVEMBER 8TH,  
1967. THAT SAME AFTERNOON HEMPKIN, WITH THE HELP OF ANOTHER EMPLOYEE,

DRAFTED THE WORDING THAT APPEARS ON THE PETITION AT THE CONCLUSION OF THE DAY SHIFT AT 4:00 P.M. IN THE LOCKER ROOM OF THE PLANT. THE FOLLOWING NOON, THURSDAY, NOVEMBER 9TH, HEMPKIN GAVE THE DRAFT OF THE PETITION AND PAPER TO A PERSON WHO IS EMPLOYED BY ANOTHER COMPANY ON THE SAME PREMISES AND ASKED HIM TO HAVE HIS WIFE TYPE THE WORDING ON THE PAPER. AT THE END OF THE LUNCH PERIOD THE PERSON RETURNED THE PETITION TO HIM WITH THE HEADING TYPEWRITTEN UPON IT. DURING THE REMAINDER OF THE SHIFT THAT AFTERNOON, HEMPKIN SECURED THE FIRST 8 SIGNATURES ON THE PETITION INCLUDING HIS OWN. THESE SIGNATURES WERE SECURED IN THE PLANT DURING WORKING HOURS. EITHER HEMPKIN WENT TO THE WORK LOCATION OF THE EMPLOYEES CONCERNED OR THEY CAME TO HIS PRESS. NO MEMBERS OF MANAGEMENT WERE IN THE AREA AT THE TIME. HEMPKIN LEFT THE PETITION IN HIS LOCKER AND MADE ARRANGEMENTS FOR ERIC HAMILTON, AN EMPLOYEE ON THE AFTERNOON SHIFT WHICH COMMENCES AT 4:00 P.M., TO SECURE THE PETITION FROM HIS LOCKER.

7. ACCORDING TO THE EVIDENCE OF HAMILTON HE GOT THE PETITION FROM HEMPKIN'S LOCKER WHEN HE CAME ON SHIFT AT 4:00 P.M. ON NOVEMBER 9TH AND DURING WORKING HOURS ON THAT SHIFT HE SECURED THE NEXT 10 SIGNATURES ON THE PETITION. AGAIN, EITHER HE WENT TO THE WORK LOCATION OF THE EMPLOYEES WHO SIGNED OR THEY CAME TO HIS WORK LOCATION. HAMILTON ALSO TESTIFIED THAT NO MEMBERS OF MANAGEMENT WERE IN THE AREA WHEN THE SIGNATURES WERE SECURED ON THE PETITION. AT THE END OF HIS SHIFT AT 12:00 P.M., HE PLACED THE PETITION IN HEMPKIN'S LOCKER. HEMPKIN TESTIFIED THAT HE GOT TWO MORE SIGNATURES ON THE PETITION AT THE BEGINNING OF THE DAY SHIFT AT 8:00 ON THE MORNING OF FRIDAY, NOVEMBER 10TH, AND AT THE END OF HIS SHIFT THAT DAY HE GAVE THE PETITION TO HAMILTON WHEN HE CAME ON THE AFTERNOON SHIFT AT 4:00 P.M. HAMILTON'S EVIDENCE IS THAT HE KEPT THE PETITION IN HIS POSSESSION OVER THE WEEK-END AND THAT HE SECURED THE LAST THREE NAMES ON THE PETITION AT AROUND 8:00 A.M. AT THE BEGINNING OF THE SHIFT ON MONDAY, NOVEMBER 13TH. (HAMILTON THAT WEEK CHANGED TO THE DAY SHIFT).

8. EDWARD NYMARK, THE VICE-PRESIDENT AND DIRECTOR OF THE RESPONDENT IN CHARGE OF THE PRINTING DIVISION, TESTIFIED THAT HE HAD NO KNOWLEDGE OF ANY UNION ORGANIZING CAMPAIGN OR PENDING APPLICATION FOR CERTIFICATION UNTIL HE RECEIVED NOTICE OF THE APPLICATION ON NOVEMBER 8TH. THAT AFTERNOON HE CALLED A MEETING OF THE PLANT MANAGER AND THE FIVE FOREMEN IN THE PRINTING DEPARTMENT AND INQUIRED AS TO THEIR KNOWLEDGE OF THE UNION'S APPLICATION FOR CERTIFICATION. HE WAS ADVISED BY THEM THAT THEY HAD NO PRIOR KNOWLEDGE OF THE APPLICATION. NYMARK'S EVIDENCE IS THAT HE ADVISED HIS SUPERVISORY STAFF ON THAT OCCASION THAT IF ANY OF THE EMPLOYEES ASKED ANY QUESTIONS OF THEM CONCERNING THE APPLICATION THEY (THE FOREMEN) COULD INVITE THE EMPLOYEES CONCERNED TO ASK THE QUESTIONS OF HIM (NYMARK) AND HE WOULD DO HIS BEST TO ANSWER THEM. NYMARK TESTIFIED THAT AS A RESULT OF THESE INSTRUCTIONS, FOREMEN BEGAN REPORTING BACK TO HIM THE VARIOUS OPINIONS BEING EXPRESSED BY THE EMPLOYEES AND THE QUESTIONS THEY WERE ASKING.

9. KENNETH HACKENBROOK TESTIFIED THAT AT ABOUT 3:45 P.M. ON WEDNESDAY, NOVEMBER 8TH, JUST PRIOR TO THE END OF THE SHIFT, HIS FOREMAN, BUD GRANGER, APPROACHED HIM AND STATED THAT SINCE HACKENBROOK WAS ONE OF THE SENIOR EMPLOYEES IN THE PLANT HE MIGHT HAVE SOME KNOWLEDGE AS TO WHAT THE MEN THOUGHT THEY WOULD GET THROUGH THE UNION THAT THEY WERE NOT GETTING ALREADY. GRANGER ASKED HACKENBROOK IF HE WANTED TO GO TO NYMARK'S OFFICE AND TALK TO HIM ABOUT IT. HACKENBROOK AGREED TO GO TO NYMARK'S OFFICE, WHICH HE DID IMMEDIATELY. ACCORDING TO HACKENBROOK, HE TOLD NYMARK THAT HE DID NOT KNOW WHAT THE OTHER EMPLOYEES WANTED FROM THE UNION AND THAT HE WOULD ONLY SPEAK FOR HIMSELF AND EXPRESSED HIS VIEWS AS TO WHAT BENEFITS MIGHT BE DERIVED FROM THE UNION. HACKENBROOK TESTIFIED THAT ON THAT OCCASION HE ASKED NYMARK WHETHER THE MEN WOULD GET THEIR "CHRISTMAS BONUS" IF THE UNION CAME IN. NYMARK REPLIED THAT HE COULD NOT SAY AS THIS WAS A DECISION THAT WAS MADE BY THE BOARD OF DIRECTORS. HACKENBROOK ALSO ASKED WHETHER THE MEN WOULD BE SENT HOME WHEN THERE WAS NO WORK IF THE UNION CAME IN. NYMARK AGAIN REPLIED THAT HE WAS NOT IN A POSITION TO ANSWER THAT QUESTION. NYMARK STATED THAT HE COULD NOT EXPRESS HIS VIEWS REGARDING THE EFFECT OF THE UNION AS HE DID NOT WANT TO INFLUENCE OR INTIMIDATE THE EMPLOYEES ONE WAY OR THE OTHER. NYMARK TESTIFIED THAT HE ASKED HACKENBROOK WHETHER HE THOUGHT IT WOULD BE A GOOD IDEA TO GET THE EMPLOYEES TOGETHER. ACCORDING TO NYMARK, HACKENBROOK ANSWERED IN THE AFFIRMATIVE. HACKENBROOK'S EVIDENCE IS THAT HE TOLD A NUMBER OF HIS FELLOW EMPLOYEES THE FOLLOWING MORNING, NOVEMBER 9TH, OF HIS MEETING WITH NYMARK THE PREVIOUS AFTERNOON AND THAT WORD OF THE MEETING "JUST SPREAD AROUND".

10. NYMARK'S EVIDENCE IS THAT HE CALLED A MEETING OF THE PLANT MANAGER AND THE FOREMEN ON THE MORNING OF NOVEMBER 9TH AND ADVISED THEM THAT HE WAS CALLING A MEETING OF THE EMPLOYEES FOR 4:00 P.M. THAT AFTERNOON IN THE "LIBRARY" OR CONFERENCE ROOM ON THE SECOND FLOOR OF THE PLANT. HE INSTRUCTED THEM TO PASS THE WORD ALONG, BUT ACCORDING TO HIS TESTIMONY NYMARK TOLD THE FOREMEN TO LET THE EMPLOYEES KNOW THAT THEIR ATTENDANCE WAS NOT REQUIRED. WORD WAS PASSED AMONG THE EMPLOYEES OF THE MEETING AND FROM THE EVIDENCE OF HEMPKIN, HAMILTON, HACKENBROOK AND ANOTHER EMPLOYEE LORNE EDGAR, IT IS APPARENT THAT THE EMPLOYEES WERE ALL AWARE THAT THE PURPOSE OF THE MEETING CALLED BY NYMARK WAS TO DISCUSS THE APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT. IT WOULD APPEAR THAT VIRTUALLY ALL OF THE EMPLOYEES ON THE DAY SHIFT AND THOSE COMING ON TO THE AFTERNOON SHIFT ATTENDED THE MEETING. IN ANY EVENT, ALL OF THE PRINTING OPERATIONS OF THE PLANT CEASED AND THE PRESSES WERE SHUT DOWN DURING THE MEETING WHICH COMMENCED SHORTLY AFTER 4:00 P.M. AND LASTED FOR OVER HALF AN HOUR. IN ATTENDANCE AT THE MEETING WITH NYMARK WAS THE PLANT MANAGER, AND THE FIVE FOREMEN.

11. THERE IS NO CONFLICT IN THE EVIDENCE AS TO WHAT TRANSPIRED AT THE MEETING, EXCEPT THAT THE EVIDENCE OF HEMPKIN, HAMILTON, HACKENBROOK AND EDGAR IS RATHER SPARSE AS COMPARED WITH THE LENGTHY REVIEW OF THE PROCEEDING GIVEN BY NYMARK IN HIS EVIDENCE. NYMARK TESTIFIED THAT HE OPENED THE MEETING BY TELLING THE EMPLOYEES THAT



HE HAD HEARD THAT A NUMBER OF EMPLOYEES HAD EXPRESSED SURPRISE CONCERNING THE APPLICATION FOR CERTIFICATION MADE BY THE UNION AND THAT HE HAD CALLED THE MEETING TO PROVIDE ANY INFORMATION THAT MIGHT BE HELPFUL TO THEM. AFTER ASSURING THE EMPLOYEES THAT HIS ACTION IN CALLING THE MEETING WAS NOT TO BE INTERPRETED AS A THREAT AND THAT THE CHOICE AS TO WHETHER THEY WANTED THE UNION WAS ENTIRELY THEIR OWN, HE THEN PROCEEDED TO EXPLICITLY OUTLINE WHAT ACTION COULD BE TAKEN BY WAY OF FILING PETITIONS IN OPPOSITION TO THE APPLICATION, INCLUDING HIS UNDERSTANDING OF THE BOARD'S CERTIFICATION PROCEDURES. HE ALSO OUTLINED THE BARGAINING PROCEDURES THAT WOULD FOLLOW SHOULD THE UNION BE CERTIFIED. IN REPLY TO A QUESTION, HE GAVE ASSURANCES THAT THERE WOULD BE NO RECRIMINATIONS AGAINST ANY SUPPORTERS OF THE UNION SHOULD THE UNION FAIL IN ITS APPLICATION FOR CERTIFICATION. IN REPLY TO A QUESTION CONCERNING THE MAINTENANCE OF THE COMPANY'S "CHRISTMAS BONUS" OR DIVIDEND, AND TO A QUESTION CONCERNING THE LAYING-OFF OF EMPLOYEES DURING SLACK PERIODS SHOULD THE UNION BE CERTIFIED, HE GAVE THE SAME ANSWERS HE HAD GIVEN TO HACKENBROOK THE PREVIOUS DAY, NAMELY THAT HE WAS NOT IN A POSITION TO ANSWER THOSE QUESTIONS. HE ALSO POINTED OUT TO THE EMPLOYEES THAT UNDER CURRENT COLLECTIVE AGREEMENTS IN THE AREA COVERING LITHOGRAPHERS THERE COULD ONLY BE TWO APPRENTICES FOR EVERY TEN JOURNEYMEN AND ONE APPRENTICE FOR EACH ADDITIONAL FIVE JOURNEYMEN. HE ALSO ADVISED THEM THAT ACCORDING TO A BULLETIN WHICH HE READ FROM, THE APPLICANT, IN CURRENT CONTRACT NEGOTIATIONS IN THE AREA, WAS ASKING THAT NO APPRENTICES BE EMPLOYED IN A BRANCH WHEN A JOURNEYMAN WAS UNEMPLOYED. ACCORDING TO NYMARK, HE ENDED THE MEETING AFTER THE ABOVE QUESTIONS HAD BEEN ASKED BY STATING THAT THE MEETING WAS CALLED TO HELP THE EMPLOYEES UNDERSTAND WHAT WAS HAPPENING, BUT THAT THE CHOICE WAS THEIRS AND THE COMPANY COULD NOT INTERFERE.

12. THE FOLLOWING MORNING AN EMPLOYEE DOUGLAS HEDGES CAME TO HIS OFFICE AND ATTEMPTED TO GET MORE DEFINITE ANSWERS FROM NYMARK ON CHANGES THAT MIGHT RESULT IN THE PLANT SHOULD THE UNION BE CERTIFIED, INCLUDING WHETHER IF THE UNION NEGOTIATED A 35 HOUR WEEK, AS OPPOSED TO THE CURRENT 37½ HOUR WEEK, THE EMPLOYEES WOULD BE PAID OVERTIME RATES FOR THE ADDITIONAL HOURS. NYMARK TESTIFIED THAT HE INFORMED HEDGES HE WOULD NOT ANSWER HIS QUESTION.

13. HERE WE HAVE A SITUATION WHERE THE SENIOR MEMBER OF MANAGEMENT IN THE PLANT, UPON RECEIVING NOTICE OF THE UNION'S APPLICATION FOR CERTIFICATION, IMMEDIATELY CALLS HIS SUPERVISORY STAFF TOGETHER AND INSTRUCTS THEM TO MAKE "INQUIRIES" CONCERNING THE UNION AMONG THE EMPLOYEES CONCERNED, AND NYMARK HIMSELF MADE INQUIRIES OF AN EMPLOYEE WHO WAS "INVITED" TO ATTEND AT HIS OFFICE. ON THE FOLLOWING DAY NYMARK CALLS A MEETING OF THE EMPLOYEES ON THE DAY AND AFTERNOON SHIFTS AND AGAIN USED HIS SUPERVISORY PERSONNEL TO ADVISE THE EMPLOYEES OF THE MEETING. THE PRINTING OPERATIONS OF THE PLANT WERE COMPLETELY SHUT DOWN DURING THE MEETING AND THE EMPLOYEES ON THE AFTERNOON SHIFT, WE WOULD ADD, SUFFERED NO LOSS OF PAY FOR THE

TIME SPENT AT THE MEETING. IN REALITY, THE EMPLOYEES OF BOTH THE DAY AND AFTERNOON SHIFTS WERE A "CAPTIVE" AUDIENCE, DESPITE NYMARK'S ASSURANCES TO THE CONTRARY.

14. NYMARK EXERCISED CONSIDERABLE CARE IN THE NATURE OF THE STATEMENTS THAT HE MADE TO THE EMPLOYEES AT THE MEETING, I.E., ASSURING THEM THAT THE CHOICE TO ACCEPT OR REJECT THE UNION WAS THEIRS, MANAGEMENT COULD NOT INTERFERE AND THERE WOULD BE NO RECRIMINATIONS AGAINST EMPLOYEES WHO SUPPORTED THE UNION SHOULD THE APPLICANT FAIL IN ITS EFFORTS TO BECOME THE CERTIFIED BARGAINING AGENT. RESTRAINED THOUGH HIS LANGUAGE WAS, THE RAPID AND INTENSE ACTIVITIES OF NYMARK AND HIS SUPERVISORY STAFF, WITHIN A TWENTY-FOUR HOUR PERIOD OF RECEIVING NOTICE OF THE UNION'S APPLICATION FOR CERTIFICATION, IN OUR VIEW, REVEALS A CONCERTED AND NOT ENTIRELY SUBTLE EFFORT ON THE PART OF THE RESPONDENT TO INFLUENCE THE EMPLOYEES AGAINST THE UNION AND TO, AT THE LEAST, TACITLY ENCOURAGE THE FILING BY THEM THE PETITIONS IN OPPOSITION TO THE APPLICATION.

15. WE NOTE FURTHER THAT THE PETITION CONTAINING THE 23 NAMES WAS OPENLY CIRCULATED IN THE PLANT. WHILE HEMPKIN AND HAMILTON TESTIFIED THAT NO SUPERVISORY STAFF WERE IN THE AREA AT THE TIME, IF THEIR EVIDENCE IS TO BE BELIEVED, IT IS OUR OPINION THAT THE FOREMEN INTENTIONALLY TURNED A "BLIND" EYE. IN ANY EVENT, THE EMPLOYEES CIRCULATING THE PETITION APPEARED TO SHOW NO CONCERN IN LEAVING THEIR WORK STATIONS TO SECURE SIGNATURES ON THE PETITION. MOREOVER, IT MUST HAVE BEEN APPARENT TO ALL OF THE EMPLOYEES THAT THE PETITION WAS BEING CIRCULATED WITH APPROVAL OF MANAGEMENT.

16. EMPLOYEES WHO WERE SUPPORTERS OF THE APPLICANT MUST HAVE HAD REASON TO BE APPREHENSIVE THAT NYMARK WOULD KNOW OF THEIR SUPPORT PARTICULARLY SINCE THEY UNDOUBTEDLY WERE AWARE OF HACKENBROOK'S "INTERVIEW" WITH NYMARK ON NOVEMBER 8TH. HACKENBROOK, WE WOULD POINT OUT, WAS AT THE APPLICANT'S ORGANIZATIONAL MEETING AT WHICH TIME EMPLOYEES FAVOURING THE UNION SIGNED MEMBERSHIP CARDS IN THE APPLICANT. THE EMPLOYEES WOULD HAVE EVEN MORE REASON TO BELIEVE THAT MANAGEMENT WOULD HAVE KNOWLEDGE AS TO WHO SIGNED PETITIONS AGAINST THE UNION IN VIEW OF THE APPARENT ENCOURAGEMENT AND SUPPORT WHICH THE RESPONDENT WAS GIVING TO SUCH ACTION BY THE EMPLOYEES. MOREOVER, IN LIGHT OF THE SWIFT ACTIONS OF THE RESPONDENT IN THE FACE OF THE APPLICANT'S APPLICATION FOR CERTIFICATION CULMINATING IN THE MEETING ADDRESSED BY NYMARK, IT IS HARD TO BELIEVE THAT THE SUPPORTERS OF THE UNION WOULD PLACE MUCH FAITH IN NYMARK'S ASSURANCE THAT THERE WOULD BE NO RECRIMINATIONS SHOULD THE UNION'S APPLICATION FAIL.

17. AS HAS BEEN NOTED IN MANY PREVIOUS BOARD CASES, A PECULIARLY SENSITIVE RELATIONSHIP EXISTS BETWEEN AN EMPLOYER AND HIS EMPLOYEES WHICH IS THE RESULT OF THE EMPLOYER'S CONTROL OVER THE LIVELIHOOD OF HIS EMPLOYEES. EMPLOYEES ACCORDINGLY ARE VULNERABLE AND RESPONSIVE TO THE WISHES OF THEIR EMPLOYER AND GENERALLY SEEK TO APPEAR, AT LEAST, TO IDENTIFY THEIR INTERESTS WITH THOSE OF THEIR

EMPLOYER. HAVING IN MIND THIS FACTOR AND THE BUSY ACTIVITIES OF MANAGEMENT IN THE INSTANT CASE, THE EMPLOYEES WERE LEFT LITTLE DOUBT AS TO THE DESIRES OF THE RESPONDENT.

18. THE PETITIONS REVEAL THAT MANY OF THE PERSONS WHO SIGNED THEM HAD NOT JOINED THE APPLICANT AND UNDOUBTEDLY THE PETITIONS ACCURATELY REFLECT THEIR VIEW. HOWEVER, HAVING REGARD TO ALL THE EVIDENCE CONCERNING THE BEHAVIOUR OF THE MANAGEMENT OF THE RESPONDENT, WE ARE NOT PREPARED TO ACCEPT THE PETITIONS AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT UNION. ACCORDINGLY, WE FIND THAT THE PETITIONS DO NOT WEAKEN OR QUALIFY ANY OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 14TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13868-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. NORTH AMERICAN PLASTICS CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: ROBERT WHITE AND KEN SIMPSON FOR THE APPLICANT, B. H. STEWART, F. W. KNIGHT AND W. LATHAM FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 29, 1967.

. . .

2. THIS IS AN APPLICATION FOR CERTIFICATION. AT THE HEARING IN THIS MATTER THE RESPONDENT REQUESTED AN ADJOURNMENT IN ORDER THAT THE RESPONDENT COULD COMPEL THE ATTENDANCE OF A WITNESS WHO COULD TESTIFY CONCERNING CERTAIN ALLEGATIONS MADE AGAINST THE APPLICANT BY THE RESPONDENT. THE WITNESS CONCERNED WAS NOT SERVED WITH A SUMMONS TO APPEAR.

3. THERE IS AN ONUS UPON A PARTY WISHING TO PRODUCE EVIDENCE THROUGH A WITNESS TO ENSURE THAT THE WITNESS IS AVAILABLE AT THE

HEARING OF AN APPLICATION. THIS ONUS IS SATISFIED WHERE A WITNESS HAS BEEN PROPERLY SERVED, WITHIN A REASONABLE TIME PRIOR TO THE HEARING, WITH A SUMMONS AND THE NECESSARY CONDUCT MONEY WHICH WOULD COMPEL HIS ATTENDANCE. IF A WITNESS WHO HAS BEEN PROPERLY SUMMONED FAILS TO ATTEND THE HEARING AN ADJOURNMENT WILL BE GRANTED IN ORDER TO AFFORD THE PARTY AN OPPORTUNITY TO ASCERTAIN THE REASONS FOR HIS NON-ATTENDANCE AND MAKE THE NECESSARY ARRANGEMENTS FOR HIS ATTENDANCE AT THE HEARING ON A FUTURE DATE. THE RESPONDENT ADVISED THE BOARD THAT INITIALLY IT HAD BELIEVED THAT SINCE IT HAD MADE ALLEGATIONS OF UNFAIR CONDUCT, THE RESPONDENT ASSUMED THAT THE BOARD WOULD TAKE OVER THE CARRIAGE OF THE ACTION WITH RESPECT TO ITS CHARGES AGAINST THE UNION. APPARENTLY, IT WAS NOT UNTIL SHORTLY BEFORE THE HEARING THAT COUNSEL, WHO APPEARED ON BEHALF OF THE RESPONDENT AT THE HEARING, DISABUSED THE RESPONDENT OF THIS MISAPPREHENSION, AT A TIME TOO LATE TO SUMMONS WITNESSES. THE RESPONDENT HAD THE ADVICE OF OTHER COUNSEL IN WINDSOR LONG BEFORE THE HEARING AND THE RESPONDENT CANNOT RELY ON ITS FAILURE TO OBTAIN PROPER ADVICE IN ORDER TO BOLSTER ITS REQUEST FOR ADJOURNMENT. IN THIS CASE, EVEN THOUGH THE RESPONDENT BELIEVED THE WITNESS WOULD ATTEND VOLUNTARILY, THE FAILURE OF THE RESPONDENT TO SUMMONS THE WITNESS BECAUSE OF THE RESPONDENT'S MISUNDERSTANDING DOES NOT RELIEVE THE RESPONDENT OF ITS OBLIGATION TO TAKE THE NECESSARY STEPS TO COMPEL THE ATTENDANCE OF ITS WITNESSES. THE BOARD THEREFORE REJECTED THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT OF THIS CASE.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE INDUSTRIAL ENGINEER EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 15TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.



APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF  
DURING NOVEMBER

13394-67-R: MARIO PARADISO (APPLICANT) V. THE HOTELS CLUBS,  
RESTAURANTS, TAVERNS EMPLOYEE UNION LOCAL 261 (RESPONDENT).

(RE: BRUCE MACDONALD MOTOR LODGE,  
3700 RICHMOND ROAD, BELLS CORNER.

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: MARIO PARADISO FOR THE APPLICANT,  
DENIS J. POWER, JAMES GRAHAM AND FRANK GRELLA FOR THE RESPONDENT,  
AND D. H. WYMARK AND F. DE LONGIS FOR BRUCE MACDONALD MOTOR LODGE.

DECISION OF THE BOARD: NOVEMBER 1, 1967.

1. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT OF THE EXAMINER IN THIS MATTER, AND WITH RESPECT TO THE INTERPRETATION OF THE COLLECTIVE AGREEMENT MADE BETWEEN THE EMPLOYER AND THE RESPONDENT.
2. THE BARGAINING UNIT SET OUT IN THE COLLECTIVE AGREEMENT CONSISTS OF "ALL THE FULL TIME AND REGULAR PART TIME EMPLOYEES" OF THE EMPLOYER IN CERTAIN LISTED CLASSIFICATIONS. THE LIST OF EMPLOYEES COMING WITHIN THIS BARGAINING UNIT AT THE DATE OF THE MAKING OF THIS APPLICATION WAS THE SUBJECT OF THE EXAMINER'S INQUIRY. THE QUESTION HAS ARISEN WHETHER OR NOT CERTAIN OF THE EMPLOYEES WHOSE ATTENDANCE RECORDS ARE SET OUT IN THE REPORT OF THE EXAMINER WERE "FULL TIME" OR "REGULAR PART TIME" EMPLOYEES. APPENDIX "A" PART "A" OF THE EXAMINER'S REPORT SETS OUT THE NAMES OF 10 PERSONS WHO THE PARTIES AGREE WERE INCLUDED IN THE BARGAINING UNIT. PART "B" OF APPENDIX "A" CONTAINS THE NAMES OF 12 PERSONS WHOSE STATUS WAS IN DISPUTE. IT IS THIS BOARD'S USUAL PRACTICE TO SPEAK OF PERSONS "REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK", RATHER THAN ALL "REGULAR PART TIME" EMPLOYEES, AND THE PARTIES AGREED THAT, FOR PURPOSES OF THIS APPLICATION, THERE WAS NO DIFFERENCE BETWEEN THE TWO PHRASES.
3. PART "B" OF APPENDIX "A" TO THE EXAMINER'S REPORT SETS OUT THE HOURS WORKED BY EACH OF THE EMPLOYEES LISTED FOR THE WEEK ENDING JULY 23RD, 1967, AND FOR THE TWELVE WEEKS PREVIOUS THERETO. ONE OF THESE PERSONS, A. CATHCARD, DID NOT WORK PRIOR TO MAY 29TH, BUT SINCE THAT TIME HAS WORKED AN AVERAGE NUMBER OF HOURS IN EXCESS OF 24 HOURS PER WEEK. THE ASSERTION BY THE COMPANY THAT THIS PERSON HAD BEEN AGREED TO BE OUT OF THE BARGAINING UNIT WAS DENIED BY THE UNION. SUCH AGREEMENT WOULD APPEAR TO CONSTITUTE AN AMENDMENT OF THE CLEAR PROVISIONS

OF THE COLLECTIVE AGREEMENT. ON THE EVIDENCE THE BOARD CAN ONLY CONCLUDE THAT MISS CATHCART WOULD COME WITHIN THE BARGAINING UNIT.

4. THE EVIDENCE WITH RESPECT TO L. TEBO IS VERY SIMILAR TO THAT RELATING TO MISS CATHCART. IT WAS STATED THAT MISS TEBO WAS A "SCHOOL GIRL", BUT THERE IS NO EXCLUSION OF STUDENTS FROM THE BARGAINING UNIT AND SHE WOULD APPEAR, ON THE EVIDENCE, TO BE INCLUDED IN IT.

5. AGAIN, THE EVIDENCE WITH RESPECT TO K. DEN AMIRANT AND G. DEN AMIRANT IS THAT, THROUGHOUT THE PERIOD COVERED BY THE EXAMINER'S REPORT, THEY WORKED AN AVERAGE NUMBER OF HOURS IN EXCESS OF 24 HOURS PER WEEK.

6. PART "B" OF APPENDIX "A" REVEALS A NUMBER OF OTHER PERSONS WHOSE INCLUSION IN THE BARGAINING UNIT MIGHT BE ARGUED ON THE BASIS OF THE MATERIAL SET OUT IN THE EXAMINER'S REPORT. IT IS CLEAR FROM THE FOREGOING, HOWEVER, THAT WITHOUT MAKING ANY DETERMINATION OF THE CASES JUST MENTIONED, THERE WERE AT LEAST 14 PERSONS IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE. THE APPLICANT HAS FILED WITH THE BOARD EVIDENCE OF THE DESIRE OF 6 PERSONS WITHIN THE BARGAINING UNIT NO LONGER TO BE REPRESENTED BY THE RESPONDENT TRADE UNION. IT IS CLEAR THAT EVEN IF FULL WEIGHT WERE GIVEN TO THIS EVIDENCE, THE REQUIREMENTS OF SECTION 43(3) OF THE LABOUR RELATIONS ACT COULD NOT BE MET. BY THAT PROVISION THE BOARD IS REQUIRED TO ASCERTAIN WHETHER "NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING - - - THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION". IN THE INSTANT CASE, THE BOARD COULD NOT MAKE THAT FINDING.

7. THE APPLICATION IS ACCORDINGLY DISMISSED.

13468-67-R: SHERIDAN MCGINTY (APPLICANT) v. FUR AND LEATHER WORKERS UNION LOCAL 82 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO (RESPONDENT) v. COOPER-WEEKS LIMITED (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON: NOVEMBER 1, 1967.

1. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES RELATING TO THE ENGLISH TRANSLATION OF THE MATERIAL IN THE ITALIAN LANGUAGE APPEARING IN THE DOCUMENTS SUBMITTED IN SUPPORT OF THIS APPLICATION, AND DESCRIBED IN PARAGRAPH 3 OF THE BOARD'S ENDORSEMENT OF THE RECORD IN THIS MATTER, DATED SEPTEMBER 6TH, 1967. PURSUANT TO THE BOARD'S DIRECTION, AN ENGLISH TRANSLATION OF THE ITALIAN PREAMBLE TO THE PETITIONS WAS PREPARED. THE TRANSLATION IS AS FOLLOWS:-

WE, THE UNDERSIGNED EMPLOYEES OF COOPER-WEEKS LIMITED, 501 ALLIANCE AVENUE, TORONTO, NO LONGER WISH TO BELONG TO FUR AND LEATHER WORKERS UNION LOCAL 82 AMC & BW OF NA., AFL-CIO.

2. COUNSEL FOR THE APPLICANT AND FOR THE EMPLOYER HAVE SUGGESTED THAT THE PHRASE "TO BELONG TO" APPEARING IN THE ENGLISH TRANSLATION OUGHT MORE PROPERLY TO READ "TO BE PART OF" OR "TO BE REPRESENTED BY" AND IT WAS SUGGESTED THAT SUCH ALTERNATIVES BE PUT TO THE BOARD'S TRANSLATOR. COUNSEL FOR THE RESPONDENT TAKES THE POSITION THAT, ON THE TRANSLATION SET OUT ABOVE, THE ITALIAN PREAMBLE DEALS ONLY WITH THE MATTER OF THE MEMBERSHIP IN THE RESPONDENT OF THE SIGNATORIES TO THE DOCUMENTS, AND THAT, ON SUCH EVIDENCE, THE BOARD CANNOT BE SATISFIED THAT SUCH PERSONS HAVE "VOLUNTARILY SIGNIFIED IN WRITING - - - THAT THEY NO LONGER WISH TO BE REPRESENTED BY" THE RESPONDENT, AS SECTION 43(3) OF THE LABOUR RELATIONS ACT REQUIRES. OF COURSE, IF THE ITALIAN PHRASE NOW TRANSLATED "TO BELONG TO" WERE TO BE TRANSLATED "TO BE REPRESENTED BY", AS COUNSEL FOR THE APPLICANT HAS SUGGESTED, THEN THIS ARGUMENT WOULD FAIL. WE DO NOT FIND IT NECESSARY TO DEAL WITH THIS MATTER, HOWEVER, SINCE, IN ANY EVENT - WHETHER ON THE BOARD'S TRANSLATION, OR ON ANY OF THE OTHER SUGGESTED TRANSLATIONS - IT IS THE UNANIMOUS OPINION OF THE BOARD THAT THE DOCUMENTS SUBMITTED IN SUPPORT OF THE APPLICATION DO EXPRESS THE WISHES OF THE SIGNATORIES NO LONGER TO BE REPRESENTED BY THE RESPONDENT. THE PURPOSE OF THE DOCUMENTS IS, IN OUR VIEW, BEYOND QUESTION. SECTION 43 OF THE ACT DOES NOT IMPOSE PRECISE FORMAL REQUIREMENTS UPON EMPLOYEES. SECTION 43(3) IN PARTICULAR IS ADDRESSED TO THE BOARD, AND REQUIRES THAT THE BOARD BE SATISFIED AS TO THE EXPRESSION OF THE WISHES OF THE EMPLOYEES. IN THE INSTANT CASE, AS WE HAVE SAID, WE ARE SATISFIED THAT THE DOCUMENTS BEFORE US EXPRESS THE WISHES OF THE SIGNATORIES NO LONGER TO BE REPRESENTED BY THE RESPONDENT. THE QUESTION REMAINING IS WHETHER THE DOCUMENTS REPRESENT THE VOLUNTARY EXPRESSION OF SUCH A WISH.

3. AT THE HEARING IN THIS MATTER, THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS SUBMITTED IN SUPPORT OF THE APPLICATION. THE RESPONDENT THEN ADDUCED EVIDENCE IN SUPPORT OF ALLEGATIONS WHICH IT MADE, TENDING TO SHOW THAT THESE DOCUMENTS DID NOT REVEAL A VOLUNTARY EXPRESSION OF THE WISHES OF THE EMPLOYEES.

4. THE EVIDENCE WAS, IN PART, THAT MR. JACK COOPER, PRESIDENT OF THE EMPLOYER, MADE A SPEECH TO THE EMPLOYEES IN THE BARGAINING UNIT SHORTLY BEFORE THE "PETITIONS" ABOVE REFERRED TO WERE CIRCULATED. MR. COOPER MADE REFERENCE TO RUMOURS ABOUT SUCH A PETITION, STATED THAT HE HAD NOTHING TO DO WITH ANY SUCH PETITION, AND STATED FURTHER THAT EMPLOYEES HAD THE RIGHT TO SIGN SUCH PETITIONS UNDER THE LAW. EVIDENCE TO THIS EFFECT WAS ALSO HEARD IN A SIMILAR APPLICATION INVOLVING THE SAME EMPLOYER, BOARD FILE NO. 13377-67-R. IN THAT CASE THE BOARD, REFERRING TO SUCH EVIDENCE, STATED:-

IT MAY BE THAT, AT THE TIME THEY AFFIXED THEIR SIGNATURES TO THE PETITION, THE EMPLOYEES WERE AWARE OF, AND TOOK INTO ACCOUNT, THE APPARENT FACTS OF THEIR EMPLOYER'S DISLIKE FOR THE OFFICIALS OF THE RESPONDENT TRADE UNION. IT DOES NOT FOLLOW FROM THIS, HOWEVER, THAT THE PETITION ITSELF MIGHT NOT CONSTITUTE A VOLUNTARY EXPRESSION OF THE EMPLOYEE'S WISHES.

IT IS OUR VIEW THAT THOSE REMARKS APPLY EQUALLY TO THE EVIDENCE HEARD IN THE INSTANT CASE.

5. EVIDENCE WAS ALSO ADDUCED RELATING TO STATEMENTS MADE TO CERTAIN EMPLOYEES BY MEMBERS OF THE MANAGEMENT OF THE EMPLOYER COMPANY. THESE STATEMENTS OF AN ANTI-UNION NATURE MIGHT IN SOME CIRCUMSTANCES SUPPORT THE ARGUMENT THAT THE PERSONS TO WHOM THEY WERE MADE, OR PERSONS WHO WERE AWARE OF SUCH STATEMENTS, WERE INFLUENCED BY SUCH AN EXPRESSION OF THE EMPLOYER'S WISHES. IT SHOULD BE NOTED THAT THE TESTIMONY OF THE WITNESSES WAS IN CONFLICT WITH RESPECT TO THESE STATEMENTS. IT IS NOT NECESSARY FOR US TO DEAL WITH SUCH CONFLICT, HOWEVER, BECAUSE THE STATEMENTS IN QUESTION, IF IN FACT THEY WERE MADE, BEAR NO RELATION TO THE DOCUMENTS SUBMITTED IN SUPPORT OF THIS APPLICATION. THERE IS NO EVIDENCE THAT THESE STATEMENTS WERE KNOWN TO THE EMPLOYEES GENERALLY, OR TO ANY GROUP OF EMPLOYEES, OR, IN PARTICULAR, TO ANY OF THE EMPLOYEES WHO SIGNED THE PETITIONS NOW BEFORE THE BOARD. FURTHER, WE COULD NOT DRAW THE INFERENCE FROM THIS EVIDENCE THAT THE EMPLOYER WAS IN FACT LENDING SUPPORT TO THE PETITION BEFORE US. THIS EVIDENCE DOES NOT, THEREFORE, DETRACT FROM THE OTHER EVIDENCE BEFORE THE BOARD RELATING TO THE ORIGATION AND CIRCULATION OF THE DOCUMENTS SUBMITTED IN SUPPORT OF THE APPLICATION.

6. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF COOPER-WEEKS LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON AUGUST 10TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

7. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF COOPER-WEEKS LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF COOPER-WEEKS LIMITED AT ITS 501 ALLIANCE AVENUE PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.



8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: NOVEMBER 1, 1967.

I HAVE JOINED WITH MY COLLEAGUES TO MAKE OUR DECISION UNANIMOUS AS IT RELATES TO THE QUESTION RAISED ON THE MATTER OF THE ENGLISH-ITALIAN TRANSLATION.

I DISSENT FROM THE REASONS FOR AND THE RESULT OF THE DECISION OF MY COLLEAGUES WITH REGARD TO THE MAIN QUESTION INVOLVED IN THIS CASE.

THE MAJORITY IN DEALING WITH THE INVOLVEMENT OF MR. JACK COOPER IN THIS AFFAIR HAVE STATED AS FOLLOWS:

THE EVIDENCE WAS, IN PART, THAT MR. JACK COOPER, PRESIDENT OF THE EMPLOYER, MADE A SPEECH TO THE EMPLOYEES IN THE BARGAINING UNIT SHORTLY BEFORE THE "PETITIONS" ABOVE REFERRED TO WERE CIRCULATED. MR. COOPER MADE REFERENCE TO RUMOURS ABOUT SUCH A PETITION, STATED THAT HE HAD NOTHING TO DO WITH ANY SUCH PETITION, AND STATED FURTHER THAT EMPLOYEES HAD THE RIGHT TO SIGN SUCH PETITIONS, UNDER THE LAW. EVIDENCE TO THIS EFFECT WAS ALSO HEARD IN A SIMILAR APPLICATION INVOLVING THE SAME EMPLOYER, BOARD FILE NO. 13377-67-R. IN THAT CASE THE BOARD, REFERRING TO SUCH EVIDENCE, STATED:-

IT MAY BE THAT, AT THE TIME THEY AFFIXED THEIR SIGNATURES TO THE PETITION, THE EMPLOYEES WERE AWARE OF, AND TOOK INTO ACCOUNT, THE APPARENT FACTS OF THEIR EMPLOYER'S DISLIKE FOR THE OFFICIALS OF THE RESPONDENT TRADE UNION. IT DOES NOT FOLLOW FROM THIS, HOWEVER, THAT THE PETITION ITSELF MIGHT NOT CONSTITUTE A VOLUNTARY EXPRESSION OF THE EMPLOYEE'S WISHES.

I PARTICULARLY NOTE THE REFERRAL OF MY COLLEAGUES TO BOARD FILE NO. 13366-67-R.

THE ACTIVITIES OF MR. COOPER MUST BE VIEWED IN THE LIGHT OF THE PARTICULAR HISTORY OF THE RELATIONSHIP BETWEEN THE PARTIES JUST BEFORE AND FOLLOWING THE UNION'S CERTIFICATION ON JANUARY 31ST, 1967. THIS STORMY HISTORY CAN BE REVIEWED BY A READING OF THE BOARD'S DECISIONS IN THE INITIAL CERTIFICATION HEARING, BOARD FILE NO. 10782-65-R, ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, JANUARY 1966,

P. 737, AND IN A CONSENT TO PROSECUTE PROCEEDING INITIATED BY THE UNION, BOARD FILE No. 12811-66-U, ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, MAY 1967, P. 162.

THE APPLICANT IN THE INSTANT CASE, MR. SHERIDAN MCGINTY, HAS MADE HIS SECOND APPEARANCE IN THIS MODERN INDUSTRIAL RELATIONS TRAGEDY. THE FIRST TIME ON STAGE FOR HIM, THE BOARD IN REFERRING TO HIS ACTIVITIES IN FILE No. 10782-65-R SAID:

2. THE APPLICANT CALLED SEVERAL WITNESS WHO TESTIFIED CONCERNING ACTIVITIES OF OFFICIALS OF THE RESPONDENT DURING THE COURSE OF THE ORGANIZING CAMPAIGN, WHEREBY IT WAS INDICATED TO THE EMPLOYEES THAT THE RESPONDENT WAS NOT IN FAVOUR OF THE EMPLOYEES BEING REPRESENTED BY THE APPLICANT UNION. THE RESPONDENT'S OFFICIALS MADE INQUIRIES OF EMPLOYEES AS TO WHETHER OR NOT THEY HAD JOINED THE APPLICANT UNION. THE EMPLOYEES WERE ALSO ADVISED AT A MEETING CALLED BY THE RESPONDENT'S PRESIDENT TO "SLAM THE DOOR IN THE UNION'S FACE". THE EMPLOYEES WERE INFORMED THAT THEY WERE NOT CHAINED TO THEIR MACHINES AND THAT IF THEY WANTED TO BE REPRESENTED BY A UNION THEY COULD GET OUT AND GO TO WORK AT A FACTORY WHERE THERE ALREADY WAS A TRADE UNION. IN ADDITION, IT WAS INDICATED TO CERTAIN EMPLOYEES, BY OFFICIALS OF THE RESPONDENT, THAT IF THE APPLICANT UNION SUCCEEDED IN ITS ATTEMPT TO BECOME THE BARGAINING AGENT, THE COMPANY MIGHT FIND IT ECONOMICALLY NECESSARY TO LAY OFF 100 TO 125 EMPLOYEES BECAUSE THE COMPANY COULD NOT MEET THE COMPETITION FROM JAPAN.

3. IT IS READILY APPARENT FROM THE OVERT MANNER IN WHICH MR. MCGINTY CIRCULATED THE PETITIONS FOR SIGNATURES, THAT HE HAD NO FEAR OF INTERFERENCE OR OBJECTION FROM THE RESPONDENT. IN VIEW OF THE ACTIVITIES OF THE RESPONDENT'S OFFICIALS AS SET OUT ABOVE THE MANNER IN WHICH MR. MCGINTY CIRCULATED THE PETITION WOULD LIKELY LEAD THE EMPLOYEES TO BELIEVE THAT HIS OPPOSITION TO THE APPLICATION HAD THE SUPPORT AND APPROVAL OF THE RESPONDENT.

MY COLLEAGUES IN THEIR MAJORITY DECISION TAKE A VERY KIND VIEW OF THE IN PLANT CAPTIVE AUDIENCE SPEECH, PERFORMANCE AND APPEARANCE OF MR. JACK COOPER IN THIS MATTER. I VIEW HIS ROLE IN THIS AFFAIR VERY SERIOUSLY, PARTICULARLY IN VIEW OF THE REMARKS OF THE BOARD IN BOARD FILE No. 12811-66-U, MAY 2ND, 1967, ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, MAY 1967, P. 162. IN THIS DECISION THE BOARD SAID:

6. IN SO FAR AS IT AFFECTS THE RESPONDENT COOPER-WEEKS LIMITED, THE APPLICATION IS DISMISSED.

THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT JACK COOPER FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (1) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 48 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT DECEMBER 20TH, 1966, HE DID INTERFERE WITH THE SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION;
- (2) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 50(c) OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT DECEMBER 20TH, 1966, HE DID SEEK TO COMPEL EMPLOYEES OF COOPER-WEEKS LIMITED, TO CEASE TO BE MEMBERS OF A TRADE UNION.

THE EVIDENCE FROM THE UNION'S WITNESSES WAS TO THE EFFECT THAT THEY WERE SUBJECT TO MANAGEMENT INFLUENCE AND PROPAGANDA DIRECTED AGAINST THE UNION AND FOR THE COMPANY.

UNION WITNESS, MRS. GERTA WILLIAMS, GAVE EVIDENCE TO THE EFFECT THAT MR. HERMAN MUELLER, FOREMAN, HAD TALKED TO HER ABOUT THE DEMERITS OF THE UNION AND HAD ADVISED HER THAT SHE WOULD BETTER HERSELF BY SIGNING FOR THE COMPANY.

UNION WITNESS, VERA GAVRAN, TESTIFIED THAT HER IMMEDIATE SUPERVISOR, MR. HANS WINKLER, TOLD HER THAT SHE SHOULD SIGN THE PETITION AGAINST THE UNION.

THE STORY UNFOLDED IN THE INSTANT CASE AND THE HISTORY OF THE RELATIONSHIP BETWEEN THE PARTIES IS A CLASSIC EXAMPLE OF THE FAILURE OF CERTAIN MANAGMENTS INVOLVED IN MODERN INDUSTRIAL RELATIONSHIPS TO PROJECT THEMSELVES INTO THE THIRD QUARTER OF THE 20TH CENTURY. THE INTERFERENCE BY MANAGEMENT AND IN PARTICULAR THE ACTIVITIES OF THE PRESIDENT OF THE COMPANY, MR. JACK COOPER, IN THIS SORDID AFFAIR SHOULD BE ROUNDLY CONDEMNED BY ALL WHO ARE COMMITTED TO CIVILIZED RELATIONSHIPS BETWEEN MEN AND TO ENLIGHTENED AND PROGRESSIVE INDUSTRIAL RELATIONSHIPS BETWEEN MANAGEMENT AND LABOUR IN ONTARIO IN 1967.

THE UNION, INSOFAR AS THE EMPLOYEES OF COOPER-WEEKS LIMITED ARE CONCERNED, HAS GONE THROUGH A LIFE AND DEATH STRUGGLE TO COME INTO BEING. ITS SHORT LIFE HAS BEEN ONE OF ABUSE, RESENTMENT AND REJECTION BY THE "MASTER OF THE HOUSE", MR. JACK COOPER. IN THE INSTANT CASE, WE HAVE THE STAGE SET FOR THE FINAL DEATH BLOWS TO BE DELIVERED TO THIS STRANGER UNION WHICH THE EMPLOYEES HAVE CHOSEN AS THEIR BARGAINING AGENT DESPITE ALL OF THE DANGERS AND OBSTACLES PLACED IN THEIR WAY BY THIS COMPANY AND IN PARTICULAR THEIR BIG BROTHER BOSS, MR. JACK COOPER.

SECTION 3 OF THE ONTARIO LABOUR RELATIONS ACT, WHICH PROVIDES THAT "EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES", IS NOTHING MORE THAN MEANINGLESS VERBAGE INSOFAR AS THE EMPLOYEES OF COOPER-WEEKS ARE CONCERNED. THE EMPLOYEES OF COOPER-WEEKS INCLUDE A LARGE SECTION OF NEW CANADIANS WHO ARE GETTING THEIR FIRST LOOK AT OUR DEMOCRACY IN PRACTICE. THEY HAVE SEEN BY NOW THAT THIS FREEDOM TO JOIN A UNION AND PARTICIPATE IN ITS LAWFUL ACTIVITIES IS A FREEDOM THAT IS AT BEST ILLUSORY. AT WORST, THIS ALLEGED FREEDOM IS A MOCKERY IN THE SETTING OF COOPER-WEEKS.

ON THE BASIS OF THE EVIDENCE IN THIS CASE, I CANNOT JOIN WITH MY COLLEAGUES IN THEIR FINDING THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF COOPER-WEEKS LIMITED HAVE "VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION".

HAVING REGARD TO ALL OF THE EVIDENCE, I AM UNABLE TO FIND THAT THE TERMINATION PETITION CONSTITUTES RELIABLE EVIDENCE OF THE VOLUNTARY SIGNIFICATIONS OF THE EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION. I WOULD HAVE NO HESITATION IN DISMISSING THIS APPLICATION.

13758-67-R: RENOLD CHAINS MANUFACTURING LTD. (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: D. F. O. HERSEY AND JOHN G. GARDNER FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 3, 1967.

1. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 45 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.
2. THE RESPONDENT WAS CERTIFIED BY THE BOARD ON JULY 28TH, 1967 FOR ALL EMPLOYEES OF THE APPLICANT AT BRANTFORD WITH CERTAIN EXCLUSIONS THAT ARE NOT HERE MATERIAL. SINCE THE DATE OF CERTIFICATION THE RESPONDENT HAS IN NO WAY COMMUNICATED WITH THE APPLICANT NOR DID IT FILE A REPLY OR APPEAR AT THE HEARING.
3. SECTION 45(1) OF THE ACT PROVIDES THAT IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE



TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT. THIS APPLICATION WAS MADE ON OCTOBER 18TH, 1967, WELL OVER THE SIXTY DAYS' PERIOD DURING WHICH THE RESPONDENT WAS REQUIRED TO GIVE NOTICE TO THE APPLICANT OF ITS DESIRE TO BARGAIN. THE APPLICATION ACCORDINGLY IS TIMELY.

4. IN LIGHT OF THE PERIOD OF TIME THAT HAS ELAPSED SINCE THE DATE OF CERTIFICATION WITHOUT THE RESPONDENT IN ANY WAY COMMUNICATING WITH THE APPLICANT, AND HAVING REGARD ALSO TO THE FAILURE OF THE RESPONDENT TO FILE A REPLY OR APPEAR AT THE HEARING IN THIS MATTER, THE BOARD IS OF THE OPINION THAT THE APPLICANT IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING WITHOUT THE TAKING OF A REPRESENTATION VOTE.

5. THE BOARD THEREFORE DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF RENOLD CHAINS MANUFACTURING LTD. AT BRANTFORD FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

13864-67-R: FRANCOIS CYR (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (RESPONDENT)

(RE: UNIFORM BUILDERS LIMITED)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: L. K. FERRIER FOR THE APPLICANT, R. KOSKIE AND F. MANONI FOR THE RESPONDENT, R. D. PERKINS FOR UNI-FORM BUILDERS LTD.

DECISION OF THE BOARD: NOVEMBER 29, 1967.

. . .

2. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 96 OF THE LABOUR RELATIONS ACT.

3. THE RESPONDENT IN ITS REPLY DATED NOVEMBER 13TH, 1967, MADE THE FOLLOWING ALLEGATION:

THE APPLICANT OUGHT NOT TO BE GRANTED TERMINATION OF BARGAINING RIGHTS BECAUSE THE APPLICATION WAS INSPIRED AND UNDULY INFLUENCED BY THE COMPANY.

SUBSEQUENTLY, BY LETTER DATED NOVEMBER 20TH, 1967, THE RESPONDENT'S SOLICITORS STATED AS FOLLOWS:

IN ADDITION TO THE ALLEGATIONS SET FORTH IN PARAGRAPH 7 OF THE RESPONDENT'S REPLY, THE RESPONDENT ALLEGES THAT UNI-FORM BUILDERS LIMITED RECENTLY INDICATED TO A CERTAIN SUBCONTRACTOR THAT IT WAS SUPPORTING THE EFFORTS OF ANOTHER TRADE UNION, NAMELY THE CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. IN ITS EFFORTS TO DECERTIFY THE RESPONDENT AND TO OBTAIN BARGAINING RIGHTS FOR ITS EMPLOYEES PRESENTLY REPRESENTED BY THE RESPONDENT.

THE LETTER FROM THE RESPONDENT'S SOLICITORS WAS RECEIVED BY THE BOARD ON NOVEMBER 21ST, 1967. ALSO ON NOVEMBER 21ST, THE RESPONDENT OBTAINED FROM THE BOARD A SUMMONS DIRECTED TO ONE A. DENIS. AT THE HEARING, COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT HE WAS INFORMED THAT MR. DENIS HAD BEEN SERVED WITH A SUMMONS TO APPEAR AT THE HEARING THE NIGHT BEFORE BUT THAT HE HAD NOT ATTENDED AT THE HEARING. THE RESPONDENT WAS NOT ABLE TO PRODUCE AN AFFIDAVIT OF SERVICE OF THE SUMMONS OF MR. DENIS.

4. THIS MATTER CAME ON FOR HEARING ON NOVEMBER 22ND, 1967, AT WHICH HEARING THE RESPONDENT REQUESTED AN ADJOURNMENT IN ORDER THAT IT WOULD HAVE THE OPPORTUNITY TO CALL WITNESSES TO TESTIFY CONCERNING THE RESPONDENT'S ALLEGATIONS OF UNFAIR CONDUCT. THE APPLICANT AND THE COMPANY BOTH OPPOSED THE ADJOURNMENT ON TWO GROUNDS. THE OTHER PARTIES BOTH ALLEGED THAT THE ALLEGATIONS MADE BY THE RESPONDENT WERE WANTING IN PARTICULARITY AS REQUIRED BY THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, IN THAT THE TIME WHEN AND THE PLACE WHERE THE ALLEGED ACTS OCCURRED WERE NOT STATED BY THE RESPONDENT NOR WAS THE PERSON WHO COMMITTED THE ALLEGED ACTS IDENTIFIED. IN ADDITION, THE RESPONDENT ALSO FAILED TO SPECIFY WHAT PROVISION OF THE ACT WAS CONTRAVENED AS A RESULT OF THE UNFAIR PRACTICE ALLEGED. THE APPLICANT AND THE COMPANY ALSO TOOK THE POSITION THAT EVEN IF SUFFICIENT PARTICULARS HAD BEEN SUPPLIED BY THE RESPONDENT WITH RESPECT TO ITS ALLEGATIONS, THERE WAS A DUTY UPON THE RESPONDENT TO HAVE ITS WITNESSES IN ATTENDANCE AT THE HEARING TO TESTIFY CONCERNING THE ALLEGATIONS.

5. AFTER HEARING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT, THE BOARD RULES AT THE HEARING THAT THE RESPONDENT, IN THE CIRCUMSTANCES OF THIS CASE, WAS NOT ENTITLED TO AN ADJOURNMENT. THE BOARD RULED THAT THE RESPONDENT HAD AN OBLIGATION, PURSUANT TO THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, TO PROVIDE A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH THE RESPONDENT INTENDED TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, AND THIS THE RESPONDENT FAILED TO DO. WHILE THE RESPONDENT ARGUED THAT IT WAS PREPARED TO GIVE ADDITIONAL PARTICULARS AT THE HEARING AND THAT IF THE BOARD SAW FIT TO ADJOURN THE MATTER BECAUSE OF THE WITNESSES' ABSENCE, THE PARTIES WOULD NOT BE PREJUDICED BY THE RESPONDENT'S DELAY IN PROVIDING PARTICULARS. THERE WAS NO SUGGESTION THAT THE ADDITIONAL PARTICULARS HAD JUST COME TO THE RESPONDENT'S

ATTENTION AND IT WAS READILY APPARENT THAT THE CONDUCT ABOUT WHICH THE RESPONDENT COMPLAINS WAS WITHIN THE KNOWLEDGE OF THE RESPONDENT AS EARLY AS NOVEMBER 13TH, 1967, THE DATE OF ITS REPLY.

6. THE RESPONDENT ALSO ARGUED THAT THERE WAS AN ONUS UPON THE OTHER PARTIES TO REQUEST FURTHER PARTICULARS AS CONTEMPLATED BY SECTION 47(3) OF THE BOARD'S RULES OF PROCEDURE.

7. SECTION 47 OF THE BOARD'S RULES OF PROCEDURE IMPOSES A DOUBLE ONUS. THERE IS ONUS ON BOTH THE PERSON MAKING THE ALLEGATIONS TO PROVIDE SUFFICIENT PARTICULARS TO ENABLE THE PARTY AGAINST WHOM THE ALLEGATIONS ARE MADE TO PREPARE ITSELF TO MEET THE ALLEGATIONS AT THE HEARING. HOWEVER, WHERE THE ALLEGATIONS ARE NOT SUFFICIENTLY PARTICULARIZED IN ORDER TO PERMIT THE PARTY AGAINST WHOM THE ALLEGATIONS ARE MADE TO PROPERLY PREPARE ITS CASE, THAT PARTY MAY REQUEST FURTHER PARTICULARS TO BE SUPPLIED.

8. HAD THE RESPONDENT APPEARED AT THE HEARING WITH WITNESSES WHO COULD TESTIFY CONCERNING THE ALLEGATIONS MADE AND THE QUESTION OF WANT OR LACK OF PARTICULARS AROSE, THE BOARD WOULD HAVE DIRECTED THE RESPONDENT TO FILE ADDITIONAL PARTICULARS AND WOULD HAVE TAKEN A BRIEF RECESS IN ORDER TO AFFORD THE RESPONDENT AN OPPORTUNITY TO DO SO. IF THE OTHER PARTIES, HAVING HAD AN OPPORTUNITY TO REVIEW THE ADDITIONAL PARTICULARS, FOUND THAT THEY WERE NOT PREPARED TO MEET THE ADDITIONAL PARTICULARS AT THAT TIME, THE BOARD WOULD HAVE GRANTED AN ADJOURNMENT IN ORDER THAT THE PARTIES COULD PREPARE THEMSELVES TO MEET THE NEW PARTICULARS. HOWEVER, IN THIS CASE, THE RESPONDENT WAS NOT PREPARED TO ADDUCE ANY EVIDENCE CONCERNING THE ALLEGATIONS IT MADE AND IT COULD NOT RELY UPON ITS FAILURE TO HAVE WITNESSES AVAILABLE IN ORDER TO BOLSTER ITS POSITION WITH RESPECT TO ITS FAILURE TO PROPERLY PARTICULARIZE ITS ALLEGATIONS OF IMPROPER CONDUCT.

9. THE RESPONDENT ARGUED THAT SINCE IT WAS INFORMED THAT A WITNESS HAD BEEN SERVED WITH A SUMMONS TO APPEAR IT SHOULD HAVE AN OPPORTUNITY TO BRING THAT WITNESS BEFORE THE BOARD. IN THIS CASE, THE RESPONDENT DID NOT OBTAIN THE SUMMONS FOR THE WITNESS IN QUESTION UNTIL THE DAY PRIOR TO THE HEARING AND EVEN IF WE WERE TO ACCEPT THE RESPONDENT'S STATEMENT CONCERNING SERVICE, THE WITNESS WAS NOT SERVED UNTIL THE EVENING PRIOR TO THE APPLICATION BEING HEARD. THE BOARD WOULD NOT COMPEL A WITNESS TO ATTEND A HEARING IN TORONTO WHERE THE WITNESS WAS ONLY SERVED THE EVENING PRIOR TO THE HEARING IN OTTAWA. IT WOULD BE UNREASONABLE TO EXPECT THAT THE WITNESS COULD MAKE THE NECESSARY ARRANGEMENTS TO BE IN ATTENDANCE IN TORONTO THE FOLLOWING MORNING.

10. THERE WAS AN ONUS UPON THE RESPONDENT TO HAVE ITS WITNESS IN ATTENDANCE AT THE HEARING AND THE RESPONDENT DID NOT MEET THIS ONUS BY WAITING UNTIL THE EVENING BEFORE THE DAY OF THE HEARING TO SERVE A WITNESS WITH A SUMMONS IN OTTAWA. IF, HOWEVER, THE RESPONDENT

HAD OBTAINED THE SUMMONS AT A MUCH EARLIER DATE AND HAD EXPERIENCED GREAT DIFFICULTY IN EFFECTING SERVICE ON THE WITNESS IN QUESTION AND HAD SERVICE ONLY BEEN EFFECTED ON THE NIGHT BEFORE THE HEARING, AS WAS THE SITUATION IN THIS CASE, THE BOARD, IN SUCH CIRCUMSTANCES, WOULD LIKELY HAVE GRANTED THE ADJOURNMENT REQUESTED. HOWEVER, THE FACTS OF THIS CASE DISCLOSES THAT NO ATTEMPT WAS MADE TO SERVE THE WITNESS WITH A SUMMONS UNTIL THE VERY LAST MOMENT.

11. THE RULE WITH REGARD TO PROVIDING PARTICULARS OF ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IS INTENDED TO AVOID DELAY. A PARTY CANNOT FAIL TO PROVIDE SUFFICIENT PARTICULARS AND FAIL TO PRODUCE WITNESSES TO ADDUCE EVIDENCE IN SUPPORT OF THOSE PARTICULARS AND RELY UPON ITS OWN FAILURE IN ORDER TO MAKE AN ARGUMENT FOR DELAY OR AN ADJOURNMENT.

12. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES MADE TO THE BOARD, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF UNI-FORM BUILDERS LTD. IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON NOVEMBER 15TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 96 OF THE SAID ACT.

13. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF UNI-FORM BUILDERS LTD. THOSE ELIGIBLE TO VOTE ARE ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF UNI-FORM BUILDERS LTD. IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP) RUSSELL AND PRESCOTT SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

15. THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE SHALL BE SEALED AND THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.

15. MR. W. G. JACKSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST OF EMPLOYEES FILED BY UNI-FORM BUILDERS LTD. IN THIS MATTER AND ON THE DUTIES AND RESPONSIBILITIES OF FRANCOIS CYR.

16. THE MATTER IS REFERRED TO THE REGISTRAR.



13874-67-R: DEERFIELD PLASTICS LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: BRIAN E. BAKER FOR THE APPLICANT  
AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 23, 1967.

1. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 45 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THE RESPONDENT WAS CERTIFIED BY THE BOARD ON APRIL 26TH, 1967 FOR ALL EMPLOYEES OF THE APPLICANT AT NEWMARKET WITH CERTAIN EXCLUSIONS THAT ARE NOT HERE MATERIAL. SINCE THE DATE OF CERTIFICATION THE RESPONDENT HAS IN NO WAY COMMUNICATED WITH THE APPLICANT NOR DID IT FILE A REPLY OR APPEAR AT THE HEARING.

3. SECTION 45(1) OF THE ACT PROVIDES THAT IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT. THIS APPLICATION WAS MADE ON NOVEMBER 8TH, 1967, WELL OVER THE SIXTY DAYS' PERIOD DURING WHICH THE RESPONDENT WAS REQUIRED TO GIVE NOTICE TO THE APPLICANT OF ITS DESIRE TO BARGAIN. THE APPLICATION ACCORDINGLY IS TIMELY.

4. IN LIGHT OF THE PERIOD OF TIME THAT HAS ELAPSED SINCE THE DATE OF CERTIFICATION WITHOUT THE RESPONDENT IN ANY WAY COMMUNICATING WITH THE APPLICANT, AND HAVING REGARD ALSO TO THE FAILURE OF THE RESPONDENT TO FILE A REPLY OR APPEAR AT THE HEARING IN THIS MATTER, THE BOARD IS OF THE OPINION THAT THE APPLICANT IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING WITHOUT THE TAKING OF A REPRESENTATION VOTE.

5. THE BOARD THEREFORE DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES AT DEERFIELD PLASTICS LIMITED, AT NEWMARKET FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

(SEE ALSO FILE No. 13875-67-R).

13894-67-R: AUGUST EQUIPMENT LIMITED (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 141 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: JOHN H. TIEFENBACK, JAMES CAMERON FOR THE APPLICANT AND I. J. THOMSON, E. WINEGARDEN FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 29, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT.
2. THE RESPONDENT WAS CERTIFIED AS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT BY CERTIFICATE DATED APRIL 13TH, 1967. THE RESPONDENT BY LETTER DATED APRIL 20TH, 1967 GAVE NOTICE TO THE APPLICANT OF ITS DESIRE TO BARGAIN. MR. WINEGARDEN, VICE-PRESIDENT OF THE RESPONDENT TESTIFIED THAT FOLLOWING THE NOTICE TO BARGAIN HE ATTENDED TWO MEETINGS WITH MR. CAMERON, VICE-PRESIDENT OF THE APPLICANT, AT WHICH PROVISIONS FOR A COLLECTIVE AGREEMENT WERE DISCUSSED. HE STATED THAT AS A RESULT OF THESE MEETINGS HE CONSIDERED THAT AN AGREEMENT HAD BEEN REACHED BETWEEN THE PARTIES SUBJECT TO RATIFICATION BY THE EMPLOYEES. MR. CAMERON TESTIFIED THAT THE TWO MEETINGS REFERRED TO WERE INFORMAL IN NATURE AND HE STATED THAT THEY HAD DISCUSSED MATTERS IN GENERAL AND HE HAD NOT AGREED TO ANYTHING WITH THE RESPONDENT. A COLLECTIVE AGREEMENT HAS NOT IN FACT BEEN SIGNED BY THE PARTIES.
3. THE LAST MEETING WAS HELD ON MAY 23RD, 1967 AND IT IS UNCONTRADICTED EVIDENCE THAT FROM THAT DATE TO THE DATE OF THE HEARING THERE HAS BEEN NO FURTHER COMMUNICATION OF ANY NATURE BETWEEN THE APPLICANT AND THE RESPONDENT NOR HAVE CONCILIATION SERVICES BEEN REQUESTED BY EITHER PARTY. ON THE EVIDENCE PRESENTED AT THE HEARING THE BOARD FINDS THAT A COLLECTIVE AGREEMENT HAS NOT BEEN ENTERED INTO BY THE PARTIES AND THAT THE RESPONDENT HAS ALLOWED MORE THAN 60 DAYS TO ELAPSE DURING WHICH IT DID NOT SEEK TO CONTINUE TO BARGAIN.
4. HAVING REGARD TO ALL OF THE CIRCUMSTANCES OF THE INSTANT CASE AND THE REPRESENTATIONS OF THE PARTIES AT THE HEARING, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF AUGUST EQUIPMENT LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF AUGUST EQUIPMENT LIMITED AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN AUGUST EQUIPMENT LIMITED AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.
5. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.
6. THE MATTER IS REFERRED TO THE REGISTRAR.

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

NOVEMBER

13712-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. NATIONAL CONCRETE PRODUCTS LIMITED (RESPONDENT) V. LOCAL UNION 1596, CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: JIM PERNA FOR THE APPLICANT, R. FLAVELLE FOR THE RESPONDENT, AND HARRY SIMON FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: NOVEMBER 1, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION CONCERNING STATUS OF A SUCCESSOR TRADE UNION MADE UNDER SECTION 47 OF THE LABOUR RELATIONS ACT. THE RESPONDENT REQUESTED A HEARING ON THE MATTER.

2. AT THE HEARING THE RESPONDENT OBJECTED TO THE MAKING OF A DECLARATION UPON THE GROUNDS SET OUT BELOW.

3. THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ON JULY 26TH, 1960. THE FOLLOWING YEAR, ON JULY 10TH, 1961, THE RIGHTS, PRIVILEGES AND DUTIES OF THE APPLICANT WERE TRANSFERRED TO THE CANADIAN LABOUR CONGRESS. THE PRESENT APPLICATION SEEKS THE RETURN OF THOSE RIGHTS, PRIVILEGES AND DUTIES FROM LOCAL 1596 OF THE CONGRESS TO THEIR ORIGINAL HOLDER, UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA.

4. THE RESPONDENT OBJECTS TO THE GRANTING OF THE DECLARATION IN THE ABOVE CIRCUMSTANCES, ON THE GROUND THAT THE RE-TRANSFER OF BARGAINING RIGHTS BACK TO THE APPLICANT DESTROYS THE CONTINUITY OF RELATIONSHIP DESIRABLE BETWEEN THE RESPONDENT AND THE BARGAINING AGENT FOR ITS EMPLOYEES. WITH RESPECT TO THIS OBJECTION, IT MUST BE OBSERVED THAT SECTION 47 OF THE ACT, UNDER WHICH THIS APPLICATION IS BROUGHT, CONTAINS NO LIMITATIONS OR RESTRICTIONS AS TO THE NUMBER OR FREQUENCY OF APPLICATIONS, OR DECLARATIONS RESULTING THEREFROM, WHICH MAY BE MADE WITHIN ANY SPECIFIED TIME. IN ANY EVENT, SOME SIX YEARS HAVE NOW ELAPSED SINCE THE CANADIAN LABOUR CONGRESS ACQUIRED THE BARGAINING RIGHTS, PRIVILEGES AND DUTIES FROM THE APPLICANT HEREIN.

5. SOMEWHAT RELATED TO THE FOREGOING OBJECTION WAS THE RESPONDENT'S SUBMISSION THAT THE APPLICATION IS UNTIMELY, BECAUSE OF THE FACT THAT THE PREDECESSOR UNION AND IT ARE IN PROCESS OF BARGAINING FOR A NEW AGREEMENT AND CONCILIATION SERVICES HAVE BEEN GRANTED TO THEM. HERE AGAIN THE RESPONDENT'S SUBMISSION IS UNSUPPORTED BY ANY OF THE PROVISIONS OF THE ACT. THERE ARE NO RESTRICTIONS EITHER IN SECTION 47 ITSELF OR IN ANY OTHER PART OF THE ACT WHICH PROHIBIT THE ISSUANCE OF A DECLARATION UNDER SECTION

47 ON THE GROUNDS OF TIMELINESS. THE EFFECT OF A DECLARATION UNDER SECTION 47 WOULD APPEAR TO BE THAT THE SUCCESSOR UNION IS PLACED IN THE SHOES OF THE PREDECESSOR UNION AT THE TIME THE DECLARATION IS MADE AND THAT THE SUCCESSOR ACQUIRES THE RIGHTS, PRIVILEGES AND DUTIES OF THE PREDECESSOR IN WHATEVER CIRCUMSTANCES THE LATTER MAY FIND ITSELF IN RELATION TO THE EMPLOYER AT THE MOMENT OF ACQUISITION. THAT THE PREDECESSOR AND RESPONDENT MAY BE USING THE CONCILIATION PROCESS AT THE TIME OF THE APPLICATION HAS, THEREFORE, NO BEARING UPON THE ISSUANCE OF A DECLARATION.

6. A THIRD SUBMISSION MADE BY THE RESPONDENT IN SUPPORT OF ITS OBJECTION IS BASED UPON THE FOLLOWING ARTICLE IN THE 1965 COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE PREDECESSOR TRADE UNION:

ARTICLE 24 - CONDITION OF AGREEMENT:

24.01 IT IS UNDERSTOOD AND AGREED THAT THIS AGREEMENT HAS BEEN ENTERED INTO BY THE COMPANY ON THE EXPRESS REPRESENTATION OF THE UNION THAT THE UNION SHALL REMAIN A COMPLETELY INDEPENDENT LOCAL UNION OF THE CANADIAN LABOUR CONGRESS DURING THE TERM OF THIS AGREEMENT.

7. THE TERM OF THE AGREEMENT HAS, HOWEVER, EXPIRED, SO THAT THE ARTICLE, ACCORDING TO ITS OWN TERMS, HAS LOST ANY SIGNIFICANCE IT MAY HAVE HAD AND CANNOT BE SAID TO AFFECT THE PRESENT APPLICATION.

8. HAVING REGARD TO ALL OF THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF LOCAL UNION 1596, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN NATIONAL CONCRETE PRODUCTS, LIMITED AND LOCAL UNION #1596, OF THE CANADIAN LABOUR CONGRESS, EFFECTIVE FROM THE 13TH DAY OF SEPTEMBER, 1965, TO THE 12TH DAY OF SEPTEMBER, 1967, AND THEREAFTER FROM YEAR TO YEAR SUBJECT TO NOTICE.

13713-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. NATIONAL SEWER PIPE LIMITED (RESPONDENT) v. LOCAL UNION 1596, CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: J. PERNA FOR THE APPLICANT, R. FLAVELLE FOR THE RESPONDENT, AND HARRY SIMON FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD:

NOVEMBER 1, 1967.



1. THIS IS AN APPLICATION FOR A DECLARATION CONCERNING STATUS OF A SUCCESSOR TRADE UNION MADE UNDER SECTION 47 OF THE LABOUR RELATIONS ACT. THE RESPONDENT REQUESTED A HEARING ON THE MATTER.
2. AT THE HEARING THE RESPONDENT OBJECTED TO THE MAKING OF A DECLARATION UPON THE GROUNDS SET OUT BELOW.
3. THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ON OCTOBER 26TH, 1960. THE FOLLOWING YEAR, ON JULY 10TH, 1961, THE RIGHTS, PRIVILEGES AND DUTIES OF THE APPLICANT WERE TRANSFERRED TO THE CANADIAN LABOUR CONGRESS. THE PRESENT APPLICATION SEEKS THE RETURN OF THOSE RIGHTS, PRIVILEGES AND DUTIES FROM LOCAL 1596 OF THE CONGRESS TO THEIR ORIGINAL HOLDER, UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA.
4. THE RESPONDENT OBJECTS TO THE GRANTING OF THE DECLARATION IN THE ABOVE CIRCUMSTANCES, ON THE GROUND THAT THE RE-TRANSFER OF BARGAINING RIGHTS BACK TO THE APPLICANT DESTROYS THE CONTINUITY OF RELATIONSHIP DESIRABLE BETWEEN THE RESPONDENT AND THE BARGAINING AGENT FOR ITS EMPLOYEES. WITH RESPECT TO THIS OBJECTION, IT MUST BE OBSERVED THAT SECTION 47 OF THE ACT, UNDER WHICH THIS APPLICATION IS BROUGHT, CONTAINS NO LIMITATIONS OR RESTRICTIONS AS TO THE NUMBER OR FREQUENCY OF APPLICATIONS, OR DECLARATIONS RESULTING THEREFROM, WHICH MAY BE MADE WITHIN ANY SPECIFIED TIME. IN ANY EVENT, SOME SIX YEARS HAVENOW ELAPSED SINCE THE CANADIAN LABOUR CONGRESS ACQUIRED THE BARGAINING RIGHTS PRIVILEGES AND DUTIES FROM THE APPLICANT HEREIN.
5. SOMEWHAT RELATED TO THE FOREGOING OBJECTION WAS THE RESPONDENT'S SUBMISSION THAT THE APPLICATION IS UNTIMELY, BECAUSE OF THE FACT THAT THE PREDECESSOR UNION AND IT ARE IN PROCESS OF BARGAINING FOR A NEW AGREEMENT AND CONCILIATION SERVICES HAVE BEEN GRANTED TO THEM. HERE AGAIN THE RESPONDENT'S SUBMISSION IS UNSUPPORTED BY ANY OF THE PROVISIONS OF THE ACT. THERE ARE NO RESTRICTIONS EITHER IN SECTION 47 ITSELF OR IN ANY OTHER PART OF THE ACT WHICH PROHIBIT THE ISSUANCE OF A DECLARATION UNDER SECTION 47 ON THE GROUNDS OF TIMELINESS. THE EFFECT OF A DECLARATION UNDER SECTION 47 WOULD APPEAR TO BE THAT THE SUCCESSOR UNION IS PLACED IN THE SHOES OF THE PREDECESSOR UNION AT THE TIME THE DECLARATION IS MADE AND THAT THE SUCCESSOR ACQUIRES THE RIGHTS, PRIVILEGES AND DUTIES OF THE PREDECESSOR IN WHATEVER CIRCUMSTANCES THE LATTER MAY FIND ITSELF IN RELATION TO THE EMPLOYER AT THE MOMENT OF ACQUISITION. THAT THE PREDECESSOR AND RESPONDENT MAY BE USING THE CONCILIATION PROCESS AT THE TIME OF THE APPLICATION HAS, THEREFORE, NO BEARING UPON THE ISSUANCE OF A DECLARATION.
6. A THIRD SUBMISSION MADE BY THE RESPONDENT IN SUPPORT OF ITS OBJECTION IS BASED UPON THE FOLLOWING ARTICLE IN THE 1965 COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE PREDECESSOR TRADE UNION.

2401 IT IS UNDERSTOOD AND AGREED THAT THIS AGREEMENT HAS BEEN ENTERED INTO BY THE COMPANY ON THE EXPRESS REPRESENTATION OF THE UNION THAT THE UNION SHALL REMAIN A COMPLETELY INDEPENDENT LOCAL UNION OF THE CANADIAN LABOUR CONGRESS DURING THE TERM OF THIS AGREEMENT.

7. THE TERM OF THE AGREEMENT HAS, HOWEVER, EXPIRED, SO THAT THE ARTICLE, ACCORDING TO ITS OWN TERMS, HAS LOST ANY SIGNIFICANCE IT MAY HAVE HAD AND CANNOT BE SAID TO AFFECT THE PRESENT APPLICATION.

8. HAVING REGARD TO ALL OF THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF LOCAL UNION 1596, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN NATIONAL SEWER PIPE LIMITED AND LOCAL UNION #1596 OF THE CANADIAN LABOUR CONGRESS, EFFECTIVE FROM THE 13TH DAY OF SEPTEMBER, 1965, TO THE 12TH DAY OF SEPTEMBER, 1967, AND THEREAFTER FROM YEAR TO YEAR SUBJECT TO NOTICE.

13753-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. NATIONAL SEWER PIPE LIMITED (RESPONDENT) v. HAMILTON GENERAL WORKERS UNION, LOCAL 202, C. L. C. (PREDECESSOR TRADE UNION).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: O. H. FERGUSON FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, NO ONE FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: NOVEMBER 9, 1967.

1. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 47 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR HAMILTON GENERAL WORKERS UNION, LOCAL 202, C.L.C. FOR THE EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN HAMILTON BY REASON OF A MERGER, AMALGAMATION OR A TRANSFER OF JURISDICTION.

2. THE RESPONDENT IN ITS REPLY FILED OBJECTIONS TO THE MAKING OF THE DECLARATION IN THE INSTANT APPLICATION ON THE IDENTICAL GROUNDS UPON WHICH IT OPPOSED THE MAKING OF A DECLARATION OF SUCCESSOR RIGHTS IN A PREVIOUS APPLICATION MADE BY THE SAME APPLICANT CONCERNING THE EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN CLARKSON AND ITS OPEN PIT OPERATION AT BURLINGTON.

3. FOR THE REASONS GIVEN BY THE BOARD IN THE PREVIOUS APPLICATION (BOARD FILE NO. 13713-67-R), THE BOARD FINDS THAT THE OBJECTIONS

RAISED BY THE RESPONDENT IN THE INSTANT APPLICATION ARE WITHOUT MERIT.

4. THE BOARD ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF HAMILTON GENERAL WORKERS UNION, LOCAL 202, C.L.C., WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN NATIONAL SEWER PIPE LIMITED AND HAMILTON GENERAL WORKERS UNION, LOCAL 202, C.L.C., EFFECTIVE FROM SEPTEMBER 13TH, 1965 TO SEPTEMBER 12TH, 1967 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

NOVEMBER

13525-67-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT)  
V. ELITE BLOUSE & SKIRT MANUFACTURING LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: ALFRED MAGERMAN, JAMES KITTS FOR THE APPLICANT AND B. W. BINNING, AL WILBUR FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 1, 1967.

1. THIS IS A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS, ANNA CELESTE, LUIGI CELESTE, FRANCA AGUECI, AND FILOMENA MAGLIO WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT REQUESTS THAT THE AGGRIEVED PERSONS BE REINSTATED BY THE RESPONDENT AND BE REIMBURSED FOR LOSS OF EARNINGS FROM THE DATES OF THEIR DISMISSALS TO THE DATE OF THEIR REINSTATEMENT. THE RESPONDENT DISCHARGED ANNA CELESTE AND FILOMENA MAGLIO ON JUNE 16TH, 1967, LUIGI CELESTE ON JULY 7TH, 1967 AND FRANCA AGUECI ON JULY 8TH, 1967. THE RESPONDENT DENIES THE COMPLAINTS.

3. THE RESPONDENT IS A CLOTHING MANUFACTURER IN TORONTO. THE COMPLAINANT CONTENDED THAT THREE OF THE AGGRIEVED PERSONS HAD WORKED FOR THE RESPONDENT FOR SOME YEARS AND FILOMENA MAGLIO FOR ABOUT TEN MONTHS AND WERE SATISFACTORY EMPLOYEES OF THE RESPONDENT. THE COMPLAINANT FURTHER CONTENDED THAT IT WAS AFTER THE RESPONDENT BECAME AWARE OF THE ACTIVITIES OF MRS. CELESTE AND MRS. AGUECI ON BEHALF OF THE UNION AND KNOWING THAT MR. CELESTE WAS THE HUSBAND OF

ANNA CELESTE AND FURTHER THAT ALL OF THE AGGRIEVED PERSONS WERE FRIENDS, THAT THEY WERE DISCHARGED BY THE RESPONDENT. THE RESPONDENT CONTENDED THAT EACH OF THE AGGRIEVED PERSONS WERE DISCHARGED FOR PROPER CAUSE AND IT WAS NOT AWARE OF THE ORGANIZING PROGRAMME OF THE COMPLAINANT OR OF ANY UNION ACTIVITIES OF ANY OF THE AGGRIEVED PERSONS.

4. THE QUESTION BEFORE THE BOARD IS WHETHER THE AGGRIEVED PERSONS WERE DISCRIMINATED AGAINST BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT. WHILE THE COMPLAINANT KNEW THAT THERE WAS AN ORGANIZING CAMPAIGN IN PROGRESS, ON THE EVIDENCE PRESENTED BY THE COMPLAINANT IN THIS REGARD, IT IS DOUBTFUL THAT THE RESPONDENT WAS AWARE OF SUCH A CAMPAIGN PRIOR TO THE RESPECTIVE DISCHARGES OF THE AGGRIEVED PERSONS. THE EVIDENCE OF THE RESPONDENT INDICATES THAT IT WAS AT THE END OF JULY THAT THEY BECAME AWARE OF UNION ACTIVITY AROUND THE PLANT. IT IS ALSO DOUBTFUL FROM THE EVIDENCE WHETHER KNOWLEDGE OF MRS. CELESTE'S AND MRS. AGUECI'S ACTIVITIES ON BEHALF OF THE COMPLAINANT WAS KNOWN BY THE RESPONDENT. THERE IS NO EVIDENCE BEFORE THE BOARD THAT ANY OF THE AGGRIEVED PERSONS WERE MEMBERS OF THE UNION AT OR BEFORE THE MATERIAL TIMES INVOLVED IN THIS MATTER. THERE IS THE EVIDENCE OF VITO CIPOLLA, SON-IN-LAW OF ANNA CELESTE, THAT THE UNION WAS MENTIONED IN A CONVERSATION HE HAD WITH MR. WILBUR, MANAGER OF THE RESPONDENT ON JUNE 19TH, REGARDING THE DISCHARGE OF FILOMENA MAGLIO AND ANNA CELESTE. THERE IS ALSO HIS EVIDENCE THAT THE UNION WAS MENTIONED IN A DISCUSSION HE HAD WITH MR. PAUL, THE SECRETARY-TREASURER OF THE RESPONDENT, IN THE OFFICE OF THE RESPONDENT AFTER THE DISCHARGE OF MR. CELESTE AND FRANCA AGUECI ON JULY 10TH. THE COMPLAINANT DID NOT OFFER ANY OTHER EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD COULD FIND THAT THE RESPONDENT EITHER KNEW OF THE COMPLAINANT'S ORGANIZING CAMPAIGN OR OF THE ACTIVITIES OF ANY OF THE AGGRIEVED PERSONS ON ITS BEHALF.

5. THERE IS A PRIMARY OBLIGATION ON THE COMPLAINANT IN CASES OF THIS NATURE TO SATISFY THE BOARD ON A RATIONAL BASIS BY DIRECT EVIDENCE OR BY EVIDENCE FROM WHICH REASONABLE INFERENCES MAY BE MADE THAT IN DISCHARGING AN EMPLOYEE, THE EMPLOYER ACTED CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. ON CONSIDERATION OF ALL OF THE COMPLAINANT'S EVIDENCE PRESENTED TO THE BOARD IN THIS CASE, IT IS THE BOARD'S OPINION THAT THE COMPLAINANT MUST RELY ON THE EVIDENCE OF MR. CIPOLLA TO SUBSTANTIATE ITS ALLEGATIONS OF DISCRIMINATION BY THE RESPONDENT AGAINST THE AGGRIEVED PERSONS BECAUSE OF THEIR UNION ACTIVITIES. THE BOARD IS NOT PREPARED TO ACCEPT MR. CIPOLLA'S TESTIMONY IN THIS REGARD. IT IS NOT NECESSARY, THEREFORE, IN THIS CASE, TO DEAL IN ANY DETAIL WITH THE SOMEWHAT LENGTHY EVIDENCE PRESENTED TO THE BOARD BY THE PARTIES AT THE HEARING.

6. HAVING REGARD TO THE WHOLE OF THE EVIDENCE AND ARGUMENTS PRESENTED AT THE HEARING, THE BOARD FINDS THAT THE COMPLAINANT DID NOT MEET THE ONUS ON IT TO ESTABLISH THAT THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

7. THE APPLICATION IS ACCORDINGLY DISMISSED.



13583-67-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT)  
V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT HEARING: ALFRED S. MAGERMAN AND J. KITTS FOR THE  
COMPLAINANT, JAMES F. LAING AND D. H. MORLEY FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 29, 1967.

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGED THAT MRS. JEAN RYBA WAS DISCHARGED BY THE RESPONDENT CONTRARY TO SECTION 50(A) OF THE ACT.
2. THE RESPONDENT MANUFACTURES LADIES' UNDERGARMENTS.
3. THE FACTS OF THIS CASE WHICH IMMEDIATELY PRECEDED THE DISCHARGE OF MRS. RYBA ARE THAT ON AUGUST 21ST, 1967 MRS. RYBA WAS SEEN, AT APPROXIMATELY 3:00 P.M., STUFFING FOUR BLUE BRASSIERES INTO HER HANDBAG.
4. WHEN THE PLANT MANAGER WAS ADVISED OF HER ACTIONS, HE REQUESTED MRS. RYBA TO OPEN HER HANDBAG AND HAND HIM THE FOUR BRASSIERES. MRS. RYBA OFFERED NO EXPLANATION FOR HER ACTIONS AT THAT TIME. HOWEVER, A FEW MINUTES LATER, MRS. RYBA APPROACHED THE PLANT MANAGER IN HIS OFFICE AND EXPLAINED THAT SHE INTENDED TO TAKE THE GARMENTS HOME AND CHECK THEM FOR DEFECTIVE WORKMANSHIP.
5. THE PLANT MANAGER TELEPHONE THE TORONTO OFFICE OF THE COMPANY FOR INSTRUCTIONS AND AT APPROXIMATELY 3:30 P.M. SUMMONED MRS. RYBA TO A POSITION IN THE PLANT WHERE AN EMPLOYEE WOULD BE ABLE TO WITNESS THEIR DISCUSSIONS. THE PLANT MANAGER THEN ADVISED MRS. RYBA THAT SINCE SHE HAD HAD THE BRASSIERES IN HER PURSE SHE WAS DISCHARGED FOR ATTEMPTED THEFT.
6. AT THE HEARING, MRS. RYBA DENIED THAT SHE INTENDED TO STEAL THE BRASSIERES IN QUESTION BUT STATED THAT SHE WANTED TO TAKE THEM HOME WHERE SHE INTENDED TO RIP THE SEAMS ON THAT PORTION OF THE BRASSIERES TO WHICH THE HOOKS AND EYES ARE FASTENED IN ORDER TO PROVE THAT THERE WAS DEFECTIVE WORKMANSHIP WHICH MADE HER WORK ON THE BRASSIERES MORE DIFFICULT. MRS. RYBA HAD HAD DISPUTES WITH OTHER EMPLOYEES CONCERNING HER WORK AND SHE ALLEGED THAT THESE DISPUTES CAUSED HER TO TAKE THIS STEP.
7. WHETHER WE ACCEPT THE COMPANY'S INTERPRETATION OF WHAT THE COMPANY BELIEVED MRS. RYBA'S INTENT TO BE, OR ACCEPT THE EXPLANATION OFFERED BY MRS. RYBA, THE RESULT IN THIS CASE WILL BE THE SAME. MRS. RYBA WAS NOT AUTHORIZED NOR DID SHE HAVE THE RIGHT TO REMOVE THE GARMENTS FROM THE PLANT. EVEN IF SHE INTENDED TO CONVERT THE GARMENTS TO HER OWN USE TEMPORARILY, SHE INTENDED TO DO SO TO SERVE HER

OWN PRIVATE PURPOSES. IF SHE HAD RIPPED THE SEAMS, THE GARMENTS WOULD HAVE HAD TO BE RE-WORKED CAUSING ADDITIONAL EXPENSE TO THE COMPANY.

8. EVEN IF MRS. RYBA WAS CORRECT IN STATING THAT THE DEFECTS SHE DESCRIBED IN HER TESTIMONY WOULD MAKE HER OWN WORK DIFFICULT, SHE ADMITTED THE DEFECTS DID NOT AFFECT HER INCOME. IN ADDITION, THE DEFECTS APPARENTLY DID NOT AFFECT THE PRODUCT AND THE COMPANY APPEARED TO BE SATISFIED WITH THE FINISHED PRODUCT.

9. MRS. RYBA COULD NOT GIVE A SATISFACTORY EXPLANATION AS TO WHY SHE REQUIRED FOUR BRASSIERES RATHER THAN JUST ONE, TO PROVE THAT THERE WAS A DEFECT IN THEIR CONSTRUCTION.

10. HAVING REGARD TO ALL THE EVIDENCE INCLUDING THE EVIDENCE CONCERNING OTHER APPLICATIONS BROUGHT BY THE COMPLAINANT WITH RESPECT TO THE RESPONDENT'S OPPOSITION TO THE COMPLAINANT'S EARLIER SUCCESSFUL ATTEMPTS TO ORGANIZE THE RESPONDENT'S EMPLOYEES AND ITS ALLEGATIONS OF UNFAIR PRACTICES, AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE PRIMARY ONUS ON IT TO PROVE THAT MRS. RYBA WAS DISCHARGED FOR A REASON OTHER THAN THE REASON GIVEN BY THE RESPONDENT AT THE TIME OF DISCHARGE. ACCORDINGLY, THE BOARD FINDS THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT MRS. RYBA WAS DISCHARGED CONTRARY TO THE PROVISIONS OF SECTION 50(A) OR ANY OTHER SECTION OF THE LABOUR RELATIONS ACT.

11. THE COMPLAINT IS THEREFORE DISMISSED.

13724-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. CITY PARKING CANADA LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: ROBIN B. CUMINE AND MATTHEW DECOSIMO FOR THE COMPLAINANT, AND HERBERT B. NOBLE, W. BERNARD HERMAN, Q.C., JOSEPH BURCH AND HAROLD WOLFE FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 20, 1967.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED, MATTHEW DECOSIMO, HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT REQUESTS THAT THE AGGRIEVED BE REINSTATED IN EMPLOYMENT WITHOUT LOSS OF PAY.

2. DeCosimo, who had been an employee of the respondent for some 16 years, was discharged on September 28, 1967. The complainant's position is that the aggrieved was discharged because he was a member of the union.

3. On September 28, 1967, DeCosimo was working as attendant at the respondent's parking lot at King Street and Leader Lane in Toronto. He was on duty alone from 7:30 in the morning until about 10:30 A.M. when a driver came on to assist him. Evidence was given by Robert L. Rooke, an independent witness, that he parked his car in the above mentioned lot at 7:55 A.M. on September 28, 1967. He attended a business meeting at the King Edward Hotel, which is immediately west of the lot across Leader Lane, and checked out of the parking lot at about 9:30 A.M. that same morning. He paid a parking fee of \$1.40.

4. It occurred to Rooke that the fee of \$1.40 was too high for the length of time he had parked. He questioned the attendant with respect to the charge and was told that there was a flat rate of \$1.00 for overnight parking which he was being charged, because he had come into the lot prior to 8:00 A.M. Mr. Rooke was not satisfied with the explanation offered and when he returned to the lot where he regularly parked his car, which happens to be one also run by the respondent, City Parking Canada Limited, he complained to the supervisor there. Later that morning Mr. Rooke attended the offices of the respondent's solicitor and completed a statutory declaration setting out the details of the affair.

5. It is quite clear that the correct charge for the period that Mr. Rooke's car was parked was 90 cents and not \$1.40, that he was, therefore, overcharged by the amount of 50 cents.

6. The matter was investigated by Harold Wolfe, a supervisor of the respondent. He testified that he went to the parking lot and in DeCosimo's presence went through the tickets in the kiosk until he found one bearing the license number of Mr. Rooke's car. The ticket bore a pencilled notation showing the figure 90 encircled. This indicated to the respondent that a charge of 90 cents had been made on the basis of the times shown on the card. These times correspond with those given by Mr. Rooke in his testimony, with the minor exception that he believed he left at 9:30, whereas the ticket shows 9:28.

7. From these facts the respondent concluded that DeCosimo had deliberately overcharged the customer Rooke; that he had lied to Rooke in purporting to explain to him the reason for the charge; that he had shown the correct charge on the ticket of 90 cents, and had pocketed the difference of 50 cents. Rooke's complaint, the respondent maintains, disclosed a deliberate attempt at theft on the part of the aggrieved, and it was for this reason, the respondent states, and for no other, that DeCosimo was discharged.

8. THE AGGRIEVED TESTIFIED THAT ABOUT ONE MONTH BEFORE THE DATE OF HIS DISCHARGE HE HAD HAD A BRIEF AND CASUAL CONVERSATION WITH MR. HERMAN, PRESIDENT OF THE COMPANY, IN WHICH THE LATTER ASKED DeCosimo IF HE HAD JOINED THE UNION. THERE IS SOME DISAGREEMENT IN THE EVIDENCE AS TO THE PLACE WHERE THIS CONVERSATION TOOK PLACE AND AS TO ITS PRECISE CONTENT. IT WAS NOT A PREARRANGED MEETING. IT IS FAIR TO SAY, HOWEVER, THAT MR. HERMAN AND THE AGGRIEVED DISCUSSED THE MATTER OF THE LATTER'S MEMBERSHIP IN THE UNION. DeCosimo SAYS THAT HERMAN TOLD HIM HE THOUGHT HE WAS MAKING A MISTAKE IN JOINING THE UNION. HERMAN DENIES THIS. HERMAN ALSO TESTIFIED THAT HE PROMPTLY FORGOT ABOUT THE CONVERSATION AND MENTIONED IT TO NOBODY UNTIL AFTER HE WAS ADVISED THAT THE PRESENT PROCEEDINGS HAD BEEN LAUNCHED. MR. HERMAN TOOK NO PART IN THE DISCHARGE OF DeCosimo.

9. THE DECISION TO DISCHARGE DeCosimo WAS THAT OF ALFRED J. BURCH, THE RESPONDENT'S OPERATIONS MANAGER. HE STATED THAT HE HAD HAD OTHER COMPLAINTS CONCERNING THE AGGRIEVED WHICH HE WAS UNABLE TO FOLLOW UP BECAUSE OF CUSTOMER RELUCTANCE TO PURSUE THE MATTER. HE TESTIFIED THAT HE TALKED TO DeCosimo ON THE TELEPHONE ON THE DATE OF THE DISCHARGE AND TOLD HIM HE WAS BEING DISCHARGED BECAUSE OF THE INCIDENT WITH RESPECT TO THE OVERCHARGE OF 50 CENTS. WE ACCEPT BURCH'S EVIDENCE THAT HE HAD NO CONVERSATION WITH HERMAN BEFORE DISCHARGING THE AGGRIEVED, TOGETHER WITH HIS ASSURANCE THAT THE SOLE REASON FOR DISCHARGING DeCosimo WAS THAT HE HAD, IN BURCH'S OPINION, "MISAPPROPRIATED" THE 50 CENTS OVERCHARGED TO ROOKE.

10. ON A CONSIDERATION OF THE EVIDENCE ADDUCED HEREIN AND HAVING HEARD THE SUBMISSIONS OF COUNSEL FOR THE PARTIES, THE BOARD IS NOT SATISFIED THAT THE AGGRIEVED PERSON, MATTHEW DeCosimo, HAD BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AS ALLEGED BY THE COMPLAINANT.

11. THE COMPLAINT IS THEREFORE DISMISSED.

13902-67-U: JAMES SPEIRS (COMPLAINANT) v. A.M. WOOLFREY, OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN, TORONTO, BRITISH AMERICAN OIL CO. LTD. (OIL & CHEMICAL CO.) K.G. COOKE, HAMILTON, CANADIAN WESTINGHOUSE LTD. (ELECTRICAL INDUSTRY) L.G. KERR, DRYDEN, DRYDEN PAPER CO. LTD. (PULP & PAPER INDUSTRY) N.H. WAGE, COPPER CLIFF, INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER, HAMILTON, STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. LTD. (STEEL INDUSTRY) (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD:

NOVEMBER 23, 1967.



1. THIS IS A COMPLAINT FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THE RESPONDENTS HAVE DEALT WITH HIM AND ONE OTHER NAMED AGGRIEVED PERSON CONTRARY TO THE PROVISIONS OF SECTION 48 OF THE LABOUR RELATIONS ACT.

2. IT APPEARS FROM THE COMPLAINT THAT THE RESPONDENTS ARE EMPLOYER REPRESENTATIVES ON A COMMITTEE KNOWN AS THE GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES. IT FURTHER APPEARS THAT LABOUR IS EQUALLY REPRESENTED ON THIS COMMITTEE. THE COMMITTEE IN QUESTION ISSUED AN INTERIM REPORT DEALING WITH THE MERITS OF COMPULSORY CERTIFICATION IN INDUSTRIAL TRADES. IT IS ALLEGED THAT THE COMMITTEE RECOMMENDED THAT "THE REGULATIONS PERTAINING TO ELECTRICIANS BE AMENDED AS EXPEDITIOUSLY AS POSSIBLE TO EXCLUDE PERSONS WHO ARE PERMANENTLY EMPLOYED AT A LIMITED PURPOSE OCCUPATION IN THE ELECTRICAL TRADE IN GENERAL INDUSTRY". THIS WOULD APPEAR TO BE CONTRARY TO WHAT THE AGGRIEVED PERSONS WISH, THAT IS, COMPULSORY CERTIFICATION. IT SHOULD BE NOTED THAT WE ARE NOT HERE CONCERNED WITH CERTIFICATION OF A TRADE UNION UNDER THE LABOUR RELATIONS ACT BUT, RATHER, WITH TRADES DESIGNATED AS "CERTIFIED TRADES" UNDER THE APPRENTICESHIP AND TRADESMEN'S QUALIFICATION ACT, 1964.

3. SECTION 48 OF THE LABOUR RELATIONS ACT PROVIDES:

48, NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

AFTER CAREFULLY CONSIDERING THE COMPLAINT, WE ARE OF THE OPINION THAT THERE IS NOTHING CONTAINED IN THE COMPLAINT WHICH IN ANY WAY SUGGESTS THAT SECTION 48 HAS BEEN VIOLATED AND, ON THIS GROUND ALONE, IT WOULD APPEAR THAT THE COMPLAINT IS WITHOUT MERIT.

4. HOWEVER, ASSUMING THAT THE COMPLAINANT COULD IN SOME WAY ESTABLISH THAT THE CONDUCT OF THE RESPONDENTS IN PARTICIPATING ON AN ADVISORY COMMITTEE, PRESUMABLY SET UP BY THE MINISTER OF LABOUR, CONSTITUTED A VIOLATION OF SECTION 48 OF THE ACT, THE RELIEF REQUESTED IN THIS CASE BY THE COMPLAINANT IS OBVIOUSLY NOT WITHIN THE POWERS OF THIS BOARD TO GRANT. THE RELIEF SOUGHT IS AS FOLLOWS:

ADVICE GIVEN BY THE GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES BE DISREGARDED, AND REMOVED FROM THE RECORDS OF THE DEPARTMENT OF LABOUR OF ONTARIO

...THE INTERIM REPORT OF MARCH 6TH, 1967, PRESENTED AND RECOMMENDED BY THE GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES BE DISREGARDED AND REVOKED.

...THE PRESENT GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES BE DISBANDED, A NEW COMMITTEE OF TIME SERVED PROVEN CRAFTSMEN IN GENERAL INDUSTRY BE CHOSEN OR ELECTED BY THE DEPARTMENT OF LABOUR TO PRESENT A TRUE PICTURE AND GIVE ADVICE ON BEHALF OF THE CRAFTSMEN IN GENERAL INDUSTRY IN ONTARIO TO THE DEPARTMENT OF LABOUR OF ONTARIO.

5. IN THE FIRST PLACE, THE REPORT WOULD APPEAR TO BE THE REPORT OF THE COMMITTEE AS A WHOLE, AND ONLY CERTAIN MEMBERS OF THAT COMMITTEE HAVE BEEN NAMED AS RESPONDENTS IN THIS PROCEEDING. SECONDLY, IT IS QUITE CLEAR THAT THIS BOARD HAS NO AUTHORITY TO ORDER THAT ADVICE GIVEN BY A COMMITTEE TO THE MINISTER OF LABOUR OR TO THE DEPARTMENT OF LABOUR BE "DISREGARDED AND REMOVED FROM THE RECORDS OF THE DEPARTMENT OF LABOUR". IT IS ENTIRELY UP TO THE MINISTER OR THE DEPARTMENT TO DECIDE WHAT IS TO BE DONE WITH THE REPORT. SEE, FOR EXAMPLE, REGINA EX REL. AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 633 V. KITCHENER FOOD MARKET LIMITED ET AL., 66 C.L.L.C. 495. THIRDLY, THE BOARD HAS NO AUTHORITY TO ORDER THAT A COMMITTEE SET UP BY THE MINISTER OR THE DEPARTMENT BE DISBANDED AND THAT ANOTHER COMMITTEE BE APPOINTED IN ITS PLACE. WHETHER OR NOT THE MINISTER OR THE DEPARTMENT CHOOSES TO APPOINT A COMMITTEE IS ENTIRELY A MATTER OF DISCRETION.

6. IN THE RESULT, THEREFORE, THE COMPLAINT DOES NOT, IN THE OPINION OF THE BOARD, MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 47(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

#### INDEXED ENDORSEMENTS - SECTION 79(2)

13592-67-M: CITY OF LONDON (APPLICANT) V. LOCAL # 101, CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: F. S. GREGORY AND W. J. ANTHONY FOR THE APPLICANT, A. K. CUNNINGHAM, B. T. MARTIN, D. W. IMRIE AND J. MCLEISH FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 22, 1967.

1. THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT, FOR A DETERMINATION OF THE QUESTION WHETHER PERSONS EMPLOYED IN CERTAIN NAMED CLASSIFICATIONS ARE EMPLOYEES OF THE APPLICANT FOR THE PURPOSES OF THE ACT.

2. THERE IS SUBSTANTIAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE FACTS WHICH LED TO THE BRINGING OF THIS APPLICATION. THE PARTIES HAVE A LENGTHY HISTORY OF COLLECTIVE BARGAINING AND ALL THE CLASSIFICATIONS IN DISPUTE HAVE PREVIOUSLY BEEN INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT UNION AND THE WAGE SCHEDULE CONTAINED IN THE COLLECTIVE AGREEMENT SETS FORTH THE SALARIES PAYABLE TO EACH OF THE NAMED CLASSIFICATIONS. FOLLOWING THE EXPIRY OF A COLLECTIVE AGREEMENT ON DECEMBER 31ST, 1966, THE PARTIES ENTERED NEGOTIATIONS AND THE APPLICANT RAISED THE ISSUE AS TO WHETHER OR NOT THE NAMED CLASSIFICATIONS SHOULD BE COVERED BY THE COLLECTIVE AGREEMENT. THE RESPONDENT UNION ADVISED THE APPLICANT THAT IT WAS NOT PREPARED TO BARGAIN THESE CLASSIFICATIONS OUT OF THE COLLECTIVE AGREEMENT AND FURTHER ADVISED THAT IF THE APPLICANT WAS NOT SATISFIED THE APPLICANT SHOULD SEEK THE RELIEF PROVIDED BY SECTION 79(2) OF THE ACT. FOLLOWING LENGTHY NEGOTIATIONS THE PARTIES SIGNED A COLLECTIVE AGREEMENT DATED JUNE 12TH, 1967 WHICH, IT IS ADMITTED COVERS ALL THE CLASSIFICATIONS IN DISPUTE. IN ADDITION, THE WAGE SCHEDULE AGAIN CONTAINS A LIST OF THESE CLASSIFICATIONS TOGETHER WITH THE SALARIES PAYABLE PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT.

3. THE PARTIES AGREED THAT THERE HAVE BEEN NO CHANGES IN THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN THE DISPUTED CLASSIFICATIONS SUBSEQUENT TO THE SIGNING OF THE COLLECTIVE AGREEMENT ON JUNE 12TH, 1967.

4. THE APPLICANT APPLIED ON SEPTEMBER 1ST, 1967 AND REQUESTED THIS BOARD TO DETERMINE WHETHER OR NOT THE PERSONS OCCUPYING THE DISPUTED CLASSIFICATIONS WERE EMPLOYEES FOR THE PURPOSES OF THE ACT. WITHOUT IMPLYING ANY BAD FAITH ON THE PART OF THE APPLICANT, THE EFFECT OF THE APPLICANT'S REQUEST IN THIS MATTER WOULD BE TO HAVE THE BOARD ASSIST THE APPLICANT IN UNILATERALLY REPUDIATING THE AGREEMENT IT ENTERED INTO ON JUNE 12TH, 1967, WHEREBY THE APPLICANT AND THE UNION AGREED THAT THE NAMED CLASSIFICATIONS WERE COVERED BY THE COLLECTIVE AGREEMENT.

5. IN PREVIOUS CASES THE BOARD HAS BEEN FACED WITH SIMILAR REQUESTS BY ONE OF THE PARTIES TO AN AGREEMENT TO REPUDIATE SUCH AGREEMENT. THE BOARD HAS CONSISTENTLY REFUSED TO ALLOW ONE PARTY TO AN AGREEMENT TO UNILATERALLY REPUDIATE THAT AGREEMENT (SEE DAVIS LUMBER LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,148, AND OSHAWA PUBLIC LIBRARY BOARD, (McLAUGHLIN PUBLIC LIBRARY) CASE, BOARD FILE 13677-67-M, NOVEMBER 22, 1967).

6. JUST AS THE BOARD WILL REFUSE TO GRANT A REMEDY UNDER SECTION 79(2) TO A TRADE UNION FOR PERSONS SPECIFICALLY EXCLUDED BY THE DESCRIPTION OF THE BARGAINING UNIT IN A COLLECTIVE AGREEMENT, AS AN AID TO VOLUNTARY RECOGNITION, FOR THE SAME REASONS WHERE THE PARTIES HAVE AGREED THAT THE COLLECTIVE AGREEMENT



COVERS THE PERSONS IN DISPUTE, THE BOARD WILL NOT GRANT THE REMEDY REQUESTED BY THE APPLICANT FOR THE PURPOSES OF TERMINATION OF BARGAINING RIGHTS.

7. SINCE THE APPLICANT HAS NOT SHOWN ANY VALID REASON FOR BEING PERMITTED TO REPUDIATE ITS AGREEMENT WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT WHICH IT ENTERED INTO ON JUNE 12TH, 1967, THE APPLICANT IS ESTOPPED FROM CLAIMING THE REMEDY REQUESTED AND THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH ITS ENTITLEMENT TO THE DETERMINATION SOUGHT AND THE APPLICATION IS ACCORDINGLY DISMISSED.

13677-67-M: OSHAWA PUBLIC LIBRARY BOARD, (McLAUGHLIN PUBLIC LIBRARY)  
(APPLICANT) v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 960  
(RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: W. L. FARRAR AND MISS ENID WALLACE FOR  
THE APPLICANT, A. RISELEY AND D. R. LINDSAY FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 22, 1967.

1. THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT, FOR A DETERMINATION OF THE QUESTION WHETHER PERSONS EMPLOYED IN CERTAIN NAMED CLASSIFICATIONS ARE EMPLOYEES OF THE APPLICANT FOR THE PURPOSES OF THE ACT.

2. THE FACTS OF THIS CASE WHICH LED TO THIS APPLICATION ARE NOT IN DISPUTE. THE RESPONDENT UNION WAS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE APPLICANT SAVE AND EXCEPT ASSISTANT CHIEF LIBRARIAN AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF LIBRARIAN IN FEBRUARY 1965, AND THE BOARD, AT THAT TIME, HAD REGARD FOR THE AGREEMENT OF THE PARTIES IN DETERMINING THE APPROPRIATENESS OF THE BARGAINING UNIT. SUBSEQUENTLY, THE PARTIES ENTERED INTO A COLLECTIVE AGREEMENT COVERING ALL EMPLOYEES OF THE APPLICANT SAVE AND EXCEPT CHIEF LIBRARIANS AND PERSONS ABOVE THE RANK OF CHIEF LIBRARIAN. THE COLLECTIVE AGREEMENT MAKES SPECIFIC REFERENCE TO THE CLASSIFICATIONS IN DISPUTE AND PROVIDES A WAGE SCHEDULE FOR EACH CLASSIFICATION. THE PARTIES ARE CURRENTLY IN NEGOTIATIONS FOR A RENEWAL OF THIS COLLECTIVE AGREEMENT.

3. AT THE HEARING IN THIS MATTER THE PARTIES AGREED THAT THE DUTIES AND RESPONSIBILITIES OF ALL THE CLASSIFICATIONS IN DISPUTE ARE SUBSTANTIALLY THE SAME AS THEY WERE AT THE TIME THE UNION WAS CERTIFIED AND THE PARTIES ENTERED INTO THE COLLECTIVE AGREEMENT.



4. NONE OF THE PERSONS IN THE BARGAINING UNIT OPPOSED THE APPLICATION FOR CERTIFICATION AND NO ONE HAS APPLIED TO TERMINATE THE UNION'S BARGAINING RIGHTS. THE APPLICANT AGREED THAT IT WAS AWARE OF ALL THE DUTIES AND RESPONSIBILITIES OF THE DISPUTED CLASSIFICATIONS AT THE TIME OF CERTIFICATION.

5. THE APPLICANT ARGUED THAT ALTHOUGH IT HAD AGREED TO INCLUDE ALL THE DISPUTED CLASSIFICATIONS IN THE BARGAINING UNIT AT THE TIME OF CERTIFICATION AND SUBSEQUENTLY NEGOTIATED A COLLECTIVE AGREEMENT COVERING ALL THE SAID CLASSIFICATIONS, IT HAD DONE SO WITHOUT THE BENEFIT OF ADVICE OF COUNSEL AND THROUGH LACK OF KNOWLEDGE OF ITS RIGHTS UNDER THE ACT. THE APPLICANT FURTHER ARGUED THAT ONCE HAVING MADE A MISTAKE IT SHOULD NOT BE SADDLED WITH THE EFFECTS OF THAT MISTAKE FOR ALL TIME.

6. IN PREVIOUS CASES, THE BOARD HAS BEEN FACED WITH SIMILAR REQUESTS, BY ONE OF THE PARTIES TO AN AGREEMENT ON WHICH THE BOARD HAS ACTED, TO REVOKE THE AGREEMENT. THE BOARD HAS CONSISTENTLY REFUSED TO ALLOW ONE PARTY TO AN AGREEMENT ON WHICH THE BOARD HAS ACTED TO UNILATERALLY REPUDIATE THAT AGREEMENT (SEE DAVIS LUMBER COMPANY LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,148). EVEN IN CASES WHERE THE PARTIES HAVE AGREED TO CERTAIN FACTS DURING THE COURSE OF AN INQUIRY BY AN EXAMINER AND THE AGREEMENT OF THE PARTIES IS SUBSEQUENTLY EMBODIED IN AN EXAMINER'S REPORT, IF ONE OF THE PARTIES TO THE AGREEMENT SUBSEQUENTLY ATTEMPTS TO REPUDIATE THE AGREEMENT BEFORE THE BOARD HAS MADE ITS DECISION ON THE EXAMINER'S REPORT, IT HAS BEEN THE BOARD'S PRACTICE TO REFUSE TO PERMIT THE PARTY TO REPUDIATE SUCH AGREEMENT.

7. IF THE BOARD WERE TO TREAT THIS APPLICATION AS A TIMELY REQUEST TO REVIEW ITS DECISION WHEREIN THE RESPONDENT UNION WAS CERTIFIED, SINCE IT IS NOT ALLEGED THAT THERE IS NEW EVIDENCE NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE CERTIFICATION HEARING AND SINCE THE EMPLOYER AT THAT HEARING WAS POSSESSED OF ALL THE FACTS AND HAD FULL OPPORTUNITY TO MAKE ANY REPRESENTATIONS WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT WHICH IT WISHED TO MAKE AND SINCE IT IS NOT ALLEGED THAT THE AGREEMENT OF THE EMPLOYER TO THE DESCRIPTION OF THE BARGAINING UNIT WAS SECURED BY ANY WRONGFUL ACT OF THE TRADE UNION, THE BOARD, IN SUCH CIRCUMSTANCES, WOULD NOT RECONSIDER, VARY OR REVOKE ITS DECISION.

8. JUST AS THE BOARD WILL REFUSE TO GRANT A REMEDY UNDER SECTION 79(2) TO A TRADE UNION FOR PERSONS SPECIFICALLY EXCLUDED BY THE DESCRIPTION OF THE BARGAINING UNIT IN A COLLECTIVE AGREEMENT, AS AN AID TO VOLUNTARY RECOGNITION, FOR THE SAME REASONS, WHERE IT IS AGREED THAT THE COLLECTIVE AGREEMENT COVERS THE PERSONS IN DISPUTE, THE BOARD WILL NOT GRANT THE REMEDY REQUESTED BY THE APPLICANT FOR THE PURPOSES OF TERMINATION OF BARGAINING RIGHTS (SEE DUNLOP CANADA LIMITED (WHITBY) CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 95).

9. IT IS ALWAYS OPEN TO THE PARTIES TO A COLLECTIVE AGREEMENT TO NEGOTIATE A CHANGE IN THE DESCRIPTION OF THE BARGAINING UNIT REPRESENTED BY THE UNION AND THE BOARD IS LOATHE TO INTERFERE WITH FREE COLLECTIVE BARGAINING. SINCE THE PARTIES HAVE BARGAINED THE DISPUTED PERSONS IN, THE QUESTION OF WHETHER THEY SHOULD CONTINUE TO BE REPRESENTED BY THE UNION MUST BE LEFT FOR COLLECTIVE BARGAINING.

10. SINCE THE APPLICANT HAS NOT SHOWN ANY VALID REASON FOR BEING PERMITTED TO REPUDIATE ITS AGREEMENT WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT, THE APPLICANT IS ESTOPPED FROM CLAIMING THE REMEDY REQUESTED AND THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH ITS ENTITLEMENT TO THE DETERMINATION SOUGHT AND THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 79(A)

13186-67-M: DUPLATE CANADA LIMITED (EMPLOYER) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA LOCAL 222 (TRADE UNION).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: NOVEMBER 9, 1967.

1. THE TRADE UNION HAS REQUESTED CLARIFICATION OF THE BOARD'S DECISION IN THIS MATTER DATED JULY 7, 1967. IN THE ENDORSEMENT OF THE RECORD ON THAT DATE, THE BOARD ANSWERED IN THE AFFIRMATIVE THE QUESTION REFERRED TO IT BY THE MINISTER OF LABOUR, NAMELY, WHETHER THE PROVISION SET OUT IN SECTION 34(2) OF THE LABOUR RELATIONS ACT SHALL BE DEEMED TO BE IMPORTED INTO THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

2. IN PARAGRAPH 6 OF THE ENDORSEMENT REFERRED TO, THE BOARD MADE THE FOLLOWING FINDING:

THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE PARTIES DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION (1) OF SECTION 34 OF THE LABOUR RELATIONS ACT.

UPON MAKING THAT FINDING THE BOARD THEN STATED:

IT FOLLOWS, BY SUBSECTION (2) OF SECTION 34, THAT THE COLLECTIVE AGREEMENT IS DEEMED TO CONTAIN THE PROVISION SET OUT IN SECTION 34(2) OF THE ACT.

3. THE CONCLUSION WAS SIMPLY DECLARATORY OF THE EFFECT OF THE STATUTE IN THE CIRCUMSTANCES SET OUT IN THE ENDORSEMENT OF JULY 7TH.

THE "DECISION", OR ANSWER GIVEN TO THE MINISTER ON THE QUESTION REFERRED WAS "YES", AND THIS IS AN ANSWER WHICH APPEARS TO US INCAPABLE OF CLARIFICATION. A NUMBER OF QUESTIONS HAVE BEEN RAISED BY THE TRADE UNION IN ITS REQUEST, INVOLVING THE EFFECTS OF THE BOARD'S ANSWER. WITH RESPECT, THESE QUESTIONS WOULD APPEAR TO CALL FOR THE ADVISORY OPINION OF THE BOARD, AND INDEED, IN PROCEEDINGS OF THIS SORT, TO GO BEYOND THE BOARD'S JURISDICTION.

4. IN ORDER THAT THERE BE NO MISUNDERSTANDING OF THE MATTER, HOWEVER, WE WOULD REPEAT THAT THE ANSWER GIVEN TO THE MINISTER ON THE QUESTION REFERRED MERELY DECLARES WHAT IS, UNDER THE ACT, THE EFFECT OF THE PARTIES' FAILURE TO INCLUDE IN THEIR COLLECTIVE AGREEMENT "SUCH A PROVISION AS IS MENTIONED IN SUBSECTION (1) OF SECTION 34 OF THE LABOUR RELATIONS ACT". NO QUESTION AS TO THE METHOD OR FORM OF ARBITRATION PROCEEDINGS ARISES HERE, AND IN PARTICULAR, THE BOARD HAS NOT DEALT IN ANY WAY WITH THE MATTER OF THE PROPRIETY OF A PROVISION FOR A SINGLE ARBITRATOR AS OPPOSED TO A TRIPARTITE BOARD OF ARBITRATION. WE OBSERVE THAT THE PROVISION SET OUT IN SECTION 34 (2) OF THE ACT CALLS FOR A TRIPARTITE BOARD. NOTHING IN THE ACT, HOWEVER, WOULD APPEAR TO RESTRICT THE PARTIES FROM REVISING THE COLLECTIVE AGREEMENT PURSUANT TO SECTION 39(5) OF THE ACT OR EITHER OF THE PARTIES FROM MAKING A REQUEST TO THIS BOARD PURSUANT TO SECTION 34(3).

5. FOR THE FOREGOING REASONS, THE REQUEST OF THE TRADE UNION IS DENIED.

13772-67-M: INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION, LOCAL 8 (TRADE UNION) v. RAINEE MANUFACTURING PRODUCTS LIMITED (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: MARTIN LEVINSON AND LOUIS WARSHAVSKY FOR THE TRADE UNION, AND R. D. PERKINS AND LOUIS WHITE FOR THE EMPLOYER.

DECISION OF THE BOARD: NOVEMBER 16, 1967.

1. THIS IS A REFERENCE TO THE BOARD FROM THE MINISTER OF LABOUR, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, OF THE QUESTION WHETHER THE TRADE UNION WAS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT PURSUANT TO SECTION 40 OF THE ACT, OR WHETHER, IT LOST ITS RIGHTS TO DO SO BY VIRTUE OF HAVING ABANDONED ITS BARGAINING RIGHTS.

2. THE TRADE UNION AND THE EMPLOYER WERE PARTIES TO A COLLECTIVE AGREEMENT, WHICH WAS EFFECTIVE FROM JANUARY 12TH, 1962, UNTIL OCTOBER 1ST, 1964. THIS COLLECTIVE AGREEMENT CONTAINED A PROVISION FOR AUTOMATIC RENEWAL FROM YEAR TO YEAR, UNLESS EITHER PARTY GAVE NOTICE WITHIN



SIXTY DAYS PRIOR TO THE TERMINATION DATE, OR THE ANNIVERSARY DATE OF THE AGREEMENT. NO SUCH NOTICE WAS EVER GIVEN BY THE TRADE UNION TO THE EMPLOYER. IN JUNE OF 1964, THE EMPLOYER MOVED ITS BUSINESS FROM NIAGARA STREET IN THE CITY OF TORONTO TO THORNCLIFFE PARK DRIVE IN THE TOWN OF LEASIDE, BOTH LOCATIONS BEING WITHIN THE MUNICIPALITY OF METROPOLITAN TORONTO. THERE WERE ABOUT THIRTY PERSONS IN THE EMPLOY OF THE EMPLOYER AT THE NIAGARA STREET LOCATION AND ABOUT FIVE OF THESE HAVE REMAINED IN ITS EMPLOY AT THE NEW LOCATION, WHERE THERE ARE NOW SOME FORTY-FIVE TO FIFTY EMPLOYEES.

3. FOLLOWING THE EXECUTION OF THE COLLECTIVE AGREEMENT IN 1962, THERE WAS NO ASSERTION BY THE TRADE UNION OF ITS BARGAINING RIGHTS UNDER THE COLLECTIVE AGREEMENT UNTIL JULY 31st, 1967, WHEN THE TRADE UNION PURPORTED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE COLLECTIVE AGREEMENT. IN THE FALL OF 1966 THE BUSINESS AGENT OF THE TRADE UNION SAW LOUIS WHITE, THE PRESIDENT OF THE EMPLOYER, ON THE STREET AND ASKED HIM TO DISCUSS A NEW COLLECTIVE AGREEMENT. MR. WHITE REPLIED THAT THE UNION HAD NO MEMBERS AMONGST HIS EMPLOYEES, AND THE MATTER ENDED THERE. THE TRADE UNION HAS CONDUCTED ORGANIZATIONAL CAMPAIGNS FOR MEMBERS AMONGST THE EMPLOYEES AT THE NEW LOCATION, BUT THESE HAVE NOT BEEN RELATED TO ANY ASSERTION OF BARGAINING RIGHTS.

4. THE COLLECTIVE AGREEMENT PROVIDES FOR RATES OF WAGES OF FROM 65¢ TO 75¢ PER HOUR, TOGETHER WITH CERTAIN INCREASES, THE LAST OF WHICH WAS TO HAVE TAKEN PLACE ON OCTOBER 1st, 1963. THE RATES OF WAGES NOW PAID BY THE EMPLOYER ARE IN EXCESS OF THOSE SET OUT IN THE COLLECTIVE AGREEMENT.

5. ON THE EVIDENCE, IT IS CLEAR THAT THE COLLECTIVE AGREEMENT HAS CEASED TO BE REGARDED AS GOVERNING THE RATES OF WAGES AND WORKING CONDITIONS OF THE EMPLOYER AND THAT THE TRADE UNION HAS, FOR A SUBSTANTIAL PERIOD OF TIME, FAILED TO TAKE ANY STEPS TO ASSERT BARGAINING RIGHTS WHICH IT HELD. IN THESE CIRCUMSTANCES, THE BOARD CONCLUDES THAT THE TRADE UNION HAS ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO EMPLOYEES OF THE EMPLOYER.

6. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS AS FOLLOWS:-

THE TRADE UNION WAS NOT ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT PURSUANT TO SECTION 40 OF THE ACT, AND HAS LOST ITS RIGHT TO DO SO BY VIRTUE OF HAVING ABANDONED ITS BARGAINING RIGHTS.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13638-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. CORNWALL GRAVEL COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.



DECISION OF THE BOARD:            NOVEMBER 14, 1967.

1.        THE RESPONDENT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED OCTOBER 11, 1967. IN THAT DECISION THE BOARD CERTIFIED THE APPLICANT AS THE BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. THE RESPONDENT SUBMITS THAT "STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD" SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. THE BOARD HAS BEFORE IT THE WRITTEN REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THIS SUBMISSION.

2.        WHILE IT HAS BEEN THE PRACTICE OF THE BOARD IN DEALING WITH INDUSTRIAL BARGAINING UNITS TO EXCLUDE STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND, FOR THAT MATTER, TO EXCLUDE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, WHERE SUCH EXCLUSIONS ARE REQUESTED BY EITHER PARTY, IT HAS BEEN THE INVARIABLE PRACTICE IN CONSTRUCTION INDUSTRY CASES TO INCLUDE STUDENTS AND PERSONS WORKING NOT MORE THAN 24 HOURS PER WEEK IN A CONSTRUCTION INDUSTRY BARGAINING UNIT. THE REASONS FOR THIS DISTINCTION INCLUDE THE NATURE OF, AND THE HISTORY OF COLLECTIVE BARGAINING IN, THE CONSTRUCTION INDUSTRY. AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES, THE BOARD SEES NO REASON IN THIS CASE TO DEPART FROM ITS NORMAL PRACTICE.

3.        ACCORDINGLY, THE BOARD CONFIRMS ITS DECISION DATED OCTOBER 11, 1967 IN THIS MATTER AND THE REQUEST OF THE RESPONDENT TO VARY THAT DECISION IS DENIED.

13641-67-R: NURSES' ASSOCIATION ST. JOSEPH'S HOSPITAL (APPLICANT) v. SISTERS OF ST. JOSEPH, ST. JOSEPH'S HOSPITAL, GUELPH, ONTARIO (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
R. W. TEAGLE AND O. HODGES.

DECISION OF THE BOARD:            NOVEMBER 15, 1967.

1.        THIS MATTER WAS HEARD BY THE BOARD ON OCTOBER 3RD, 1967, AND A CERTIFICATE WAS ISSUED TO THE APPLICANT DATED OCTOBER 5TH, 1967.

2.        NO ONE APPEARED AT THE HEARING ON BEHALF OF THE RESPONDENT, ALTHOUGH IT WAS DULY NOTIFIED. THE RESPONDENT FILED A REPLY IN WHICH IT SET OUT A PROPOSED BARGAINING UNIT, WHICH WAS IDENTICAL TO THAT SUGGESTED BY THE APPLICANT. THE BARGAINING UNIT DESCRIBED IN THE CERTIFICATE IS THE SAME AS THAT PROPOSED BY THE PARTIES.

3.        BY LETTER DATED OCTOBER 6TH, THE RESPONDENT REQUESTED THE BOARD TO AMEND THE DESCRIPTION. HAVING REGARD TO THE FOREGOING AND THE FACT THAT THERE IS NOTHING IN THE LETTER WHICH WAS NOT AVAILABLE TO THE RESPONDENT AT THE DATE OF HEARING, THE BOARD DENIES THE RESPONDENT'S REQUEST FOR REVIEW.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

13805-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793  
(APPLICANT) v. GAGNE R & G INCORPORATED (RESPONDENT).

5. ON THE QUESTION OF THE DESCRIPTION OF THE BARGAINING UNIT THE PROBLEM THAT ARISES IS THAT THE RESPONDENT, WHICH IS IN THE BUSINESS OF RENTING MOBILE CRANES AND OTHER EQUIPMENT TOGETHER WITH THEIR OPERATORS, LEASES THE EQUIPMENT FOR PURPOSES BOTH WITHIN AND WITHOUT THE CONSTRUCTION INDUSTRY. AFTER CAREFULLY CONSIDERING THE MATTER, WE ARE SATISFIED THAT WE OUGHT NOT TO DEPART FROM THE DESCRIPTION OF THE BARGAINING UNIT NORMALLY GRANTED TO THE APPLICANT, SUBJECT, HOWEVER, TO CERTAIN CLARITY NOTES. ACCORDINGLY, THE BOARD THEREFORE FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR PURPOSES OF CLARITY THE BOARD DECLARES:

- (1) THAT EMPLOYEES WHEN WORKING AT THE RESPONDENT'S YARD IN OTTAWA ARE NOT INCLUDED IN THE BARGAINING UNIT;
- (2) THAT EMPLOYEES FALLING WITHIN THE DESCRIPTION OF THE BARGAINING UNIT WHO HAVE BEEN TRANSFERRED FROM MONTREAL, EITHER ON A TEMPORARY OR ON A MORE PERMANENT BASIS, ARE INCLUDED IN THE BARGAINING UNIT;
- (3) THAT THE TERM "SIMILAR EQUIPMENT" INCLUDES THE "MOBILE TOWER" OPERATED BY THE RESPONDENT;
- (4) THAT THE BARGAINING UNIT RELATES ONLY TO THE CONSTRUCTION INDUSTRY OPERATIONS OF THE RESPONDENT.

(NOVEMBER 22, 1967).

13840-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA  
(APPLICANT) v. REDFERN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

6. ALTHOUGH THE RESPONDENT STATES THAT NINE OF THE ELEVEN EMPLOYEES ON THE LIST OF EMPLOYEES WERE LAID OFF ON THE AFTERNOON OF NOVEMBER 3RD, THE DATE OF THE MAKING OF THE APPLICATION, IT SEEMS CLEAR THAT ALL ELEVEN WORKED PART OF THAT DAY, AND WERE ACCORDINGLY EMPLOYEES ON THE DATE OF THE MAKING OF THE APPLICATION.

(NOVEMBER 14, 1967).

TRUSTEESHIP REPORT

T-29-66: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, A.F.L. - C.I.O., AND LOCAL 2965, THE RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA.

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, M. J. SOMERVILLE AND W. STEFANOVITCH FOR THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, A.F.L. - C.I.O.; ELLIOTT G. POSEN FOR CERTAIN MEMBERS OF LOCAL 2965, THE RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA; AND MICHAEL SCANLON APPEARING ON HIS OWN BEHALF.

DECISION OF THE BOARD: NOVEMBER 14, 1967.

1. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA HAS APPLIED FOR CONTINUATION OF THE SUPERVISION OR CONTROL ASSUMED OVER LOCAL 2965, THE RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, HEREINAFTER REFERRED TO AS "LOCAL 2965", FOR A FURTHER PERIOD OF TWELVE MONTHS, PURSUANT TO SUBSECTION 2 OF SECTION 60 OF THE LABOUR RELATIONS ACT. THE PARTIES HAVE AGREED TO AN ADJOURNMENT OF THE PROCEEDINGS AND HAVE FURTHER AGREED THAT THE STATUS QUO SHOULD BE MAINTAINED UNTIL A DECISION HAS BEEN RENDERED BY THE BOARD IN THE APPLICATION.

2. WHILE A QUESTION HAS ARISEN AS TO THE DATE WHEN THE ORIGINAL SUPERVISION OR CONTROL WAS ASSUMED BY THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA OVER ITS LOCAL 2965, HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD, AS A STRICTLY INTERIM MEASURE AND WITHOUT PREJUDICE TO THE BOARD'S FINAL DECISION IN THIS MATTER, AGREES TO THE CONTINUATION OF THE SUPERVISION OR CONTROL ASSUMED BY THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA OVER ITS LOCAL 2965 UNTIL THE BOARD RENDERS A DECISION IN THE PRESENT APPLICATION.

STATISTICAL TABLES FOR NOVEMBER 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		NOVEMBER 1967	1ST 8 MONTHS OF FISCAL YEAR 1967-68	1966-67
I.	CERTIFICATION	77	661	655
II.	DECLARATION TERMINATING BARGAINING RIGHTS	12	61	25
III.	DECLARATION OF SUCCESSOR STATUS	1	13	9
IV.	DECLARATION THAT STRIKE UNLAWFUL	1	30	19
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	12	1
VI.	CONSENT TO PROSECUTE	25	79	59
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	29	126	75
VIII.	MISCELLANEOUS	<u>4</u>	<u>59</u>	<u>43</u>
TOTAL		<u>149</u>	<u>1037</u>	<u>886</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		NOVEMBER 1967	1ST 8 MONTHS OF FISCAL YEAR 1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		95	611	630



TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	NOVEMBER 1967	1ST 8 MONTHS 1967-68	FISCAL YR. 1966-67
I. CERTIFICATION	88	658	685
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	52	25
III. DECLARATION OF SUCCESSOR STATUS	4	12	8
IV. DECLARATION THAT STRIKE UNLAWFUL	2	30	17
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	12	-
VI. CONSENT TO PROSECUTE	23	80	53
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	16	125	82
VIII. MISCELLANEOUS	<u>5</u>	<u>53</u>	<u>45</u>
TOTAL	<u>145</u>	<u>1022</u>	<u>915</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>NOVEMBER</u> <u>1967</u>	<u>1ST 8 MTHS</u> <u>1967-68</u>	<u>FISCAL YR.</u> <u>1966-67</u>	<u>NOVEMBER</u> <u>1967</u>	<u>1ST 8 MTHS</u> <u>1967-68</u>	<u>FISCAL YR.</u> <u>1966-67</u>
<u>CERTIFICATION</u>						
GRANTED	61	467	504	2231	15871	14310
DISMISSED	21	140	124	915	9303	10038
WITHDRAWN	<u>6</u>	<u>51</u>	<u>57</u>	<u>130</u>	<u>1168</u>	<u>815</u>
TOTAL	<u>88</u>	<u>658</u>	<u>685</u>	<u>3276</u>	<u>26342</u>	<u>25163</u>
<u>TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	3	22	14	68	347	462
DISMISSED	4	28	11	96	867	279
WITHDRAWN	<u>-</u>	<u>2</u>	<u>-</u>	<u>-</u>	<u>1</u>	<u>-</u>
TOTAL	<u>7</u>	<u>52</u>	<u>25</u>	<u>164</u>	<u>1215</u>	<u>741</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		NOVEMBER	1ST 8 MONTHS	FISCAL YR.
		1967	1967-68	1966-67
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	2	2
	DISMISSED	-	3	-
	WITHDRAWN	<u>2</u>	<u>25</u>	<u>15</u>
	TOTAL	<u>2</u>	<u>30</u>	<u>17</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	-
	WITHDRAWN	<u>-</u>	<u>11</u>	<u>-</u>
	TOTAL	<u>-</u>	<u>12</u>	<u>-</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	5	7
	DISMISSED	-	8	9
	WITHDRAWN	<u>23</u>	<u>67</u>	<u>37</u>
	TOTAL	<u>23</u>	<u>80</u>	<u>53</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY

THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	NOVEMBER 1967	1ST 8 MTHS 1967-68	FISCAL YR. 1966-67
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	11	13
POST-HEARING VOTE	3	29	28
BALLOTS NOT COUNTED	-	-	-

DISMISSED AFTER VOTE

PRE-HEARING VOTE	-	9	8
POST-HEARING VOTE	3	27	45
BALLOTS NOT COUNTED	-	3	-
TOTAL	<u>7</u>	<u>79</u>	<u>94</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY

THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	NOVEMBER 1967	1ST 8 MTHS 1967-68	FISCAL YR. 1966-67
*RESPONDENT UNION SUCCESSFUL	-	1	4
RESPONDENT UNION UNSUCCESSFUL	-	11	11
TOTAL	<u>-</u>	<u>12</u>	<u>15</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



REVISED STATISTICS

THE STATISTICS ON CERTIFICATION APPLICATIONS DISPOSED OF REPORTED IN THE OCTOBER ISSUE ON PAGE 690, ARE REVISED AS FOLLOWS:-

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

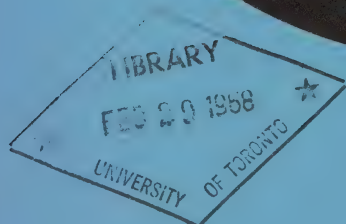
	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>OCTOBER</u>	<u>1ST 7 MTHS</u>	<u>FISCAL YR.</u>	<u>OCTOBER</u>	<u>1ST 7 MTHS</u>	<u>FISCAL</u>
	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>	<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
<u>1. CERTIFICATION</u>						
GRANTED	53	406	431	2753	13640	11075
DISMISSED	12	119	104	422	8288	9054
WITHDRAWN	2	45	55	41	1038	798
TOTAL	<u>67</u>	<u>570</u>	<u>590</u>	<u>3216</u>	<u>22966</u>	<u>20927</u>

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING DECEMBER 1967

BARGAINING AGENTS CERTIFIED DURING DECEMBER

NO VOTE CONDUCTED

13653-67-R: LOCAL 345, BROCKVILLE, ONTARIO OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA (APPLICANT) V. PALACE AMUSEMENT COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MOTION PICTURE PROJECTIONISTS EMPLOYED BY THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER. (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 835 ).

13675-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. AMPLIFONE CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (160 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 840 ).

13687-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. WHITBY DISTRICT HIGH SCHOOL BOARD (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT).

13693-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CITY CONCRETE FORMING LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA AND ITS LOCAL 247 (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 850).

13694-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TAPLEN CONST. CO., LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA AND ITS LOCAL 247 (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

13766-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED, ST. THOMAS ASSEMBLY PLANT (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (INTERVENER).

- AND -

13793-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED, ST. THOMAS ASSEMBLY PLANT (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

THE ABOVE APPLICATIONS ARE CONSOLIDATED.

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SOUTHWOLD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (496 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 857).

13877-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL No. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. LEWIS CARTAGE MOVING AND PARCEL DELIVERY (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).



13888-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. ROXALIN OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY STAFF, SALES AND OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED IN THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 867 ).

13899-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. R. G. BALL LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

13906-67-R: DENTAL TECHNICIANS UNION, LOCAL 43 (APPLICANT) V. AESTHETIC BRIDGEWORK LABORATORY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL DENTAL TECHNICIANS EMPLOYED BY THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT LABORATORY FOREMAN AND PERSONS ABOVE THE RANK OF LABORATORY FOREMAN." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 873 ).

13907-67-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FALLA CARTAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE CITY OF HAMILTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (8 EMPLOYEES IN THE UNIT).

13910-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L. (APPLICANT) V. UNI-FORM BUILDERS LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES, TRUCK DRIVERS AND ALL EMPLOYEES ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, EMPLOYED BY THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

13911-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

13912-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWN OF ACTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE WORKS DEPARTMENT OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

13913-67-R:

- AND -

13914-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. B. F. KLASSEN CONSTRUCTION LTD. (RESPONDENT) V. LOCAL 1669, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER #1) V. LOCAL 2693, LUMBER AND SAWMILL WORKERS UNION OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER #2) V. UNITED ASSOCIATION OF PLUMBERS AND FITTERS, LOCAL 628 (INTERVENER #3) V. THE BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA LOCAL UNION 25 (INTERVENER #4) V. BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1671 (INTERVENER #5) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (INTERVENER #6) V. LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (INTERVENER #7) V. SHEETMETAL WORKERS UNION LOCAL 397 PORT ARTHUR, FT. WILLIAM & AREA (INTERVENER #8) V. LOCAL UNION 339, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #9).

(CONSOLIDATED APPLICATIONS).

UNIT: "ALL CONSTRUCTION LABOURERS, TRUCK DRIVERS, CARPENTERS AND CARPENTERS' APPRENTICES AND ALL EMPLOYEES ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME EMPLOYED BY THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

13915-67-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS OPERATION AT THE CANADIAN BROADCASTING CORPORATION'S OPERATIONS AND BUILDINGS IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND OFFICE STAFF." (17 EMPLOYEES IN THE UNIT).

13920-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. PLAZA HOTEL SUDBURY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

13930-67-R: NURSES' ASSOCIATION PETERBOROUGH COUNTY CITY HEALTH UNIT (APPLICANT) V. BOARD OF HEALTH PETERBOROUGH COUNTY CITY HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT THE SUPERVISOR OF NURSES AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSES." (18 EMPLOYEES IN THE UNIT).

13931-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. DENTAL PROSTHETICS LABORATORY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

13932-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. THE TIDEY CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

13934-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HOTEL DIEU HOSPITAL ST. CATHARINES (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772, SUCCESSOR TO LOCAL 866 (INTERVENER).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDER GRADUATE NURSES, GRADUATE PHARMACISTS, UNDER GRADUATE PHARMACISTS, GRADUATE DIETICIANS, STUDENT DIETICIANS, TECHNICAL PERSONNEL, INCLUDING STUDENT TECHNICIANS, MEMBERS OF THE ORDER OF THE RELIGIOUS HOSPITALLERS OF ST. JOSEPH, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD OR ON A COOPERATIVE TRAINING PROGRAMME, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT WITH LOCAL UNION NO. 772 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS." (231 EMPLOYEES IN THE UNIT).

13944-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CASH AND CARRY OPERATIONS AT SUDBURY, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

13946-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALNOR EARTHMOVING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

13950-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. NEWMAN BROTHERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF MANITOULIN EXCEPT THAT PORTION OF THE DISTRICT OF MANITOULIN WITHIN A THIRTY-FIVE MILE RADIUS OF THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13959-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. JOHN'S CANTEEN SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

13961-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. QUINTE SANITATION SERVICES LIMITED (RESPONDENT) V. QUINTE SANITATION SERVICES LIMITED EMPLOYEES ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT THE SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

13974-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CITY-WIDE AUTOMATIC TRANSMISSION SERVICES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).



13978-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) V. HEADWAY BUILDERS ONTARIO LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURG IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

13979-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. WATERS TOWNSHIP AREA SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF WATERS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PROFESSIONAL TEACHING STAFF." (3 EMPLOYEES IN THE UNIT).

13982-67-R: THE BRICKLAYERS' MASONS AND PLASTERER'S INTERNATIONAL UNION OF AMERICA (APPLICANT) V. DUNKER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN LOCAL 12 OF THE BRICKLAYERS' MASONS AND PLASTERER'S INTERNATIONAL UNION OF AMERICA AND THE RESPONDENT." (4 EMPLOYEES IN THE UNIT).

THE JOB SITE AFFECTED BY THIS APPLICATION IS IN THE COUNTY OF BRUCE AND THIS FALLS WITHIN BOARD AREA #3. ALTHOUGH THE RESPONDENT SUBMITS THAT THE AREA SHOULD BE RESTRICTED TO THE COUNTY OF BRUCE, THE BOARD SEES NO REASON FOR DEPARTING FROM ITS USUAL GEOGRAPHIC AREA IN THIS CASE.

IT WOULD APPEAR, HOWEVER, THAT LOCAL 12 OF THE APPLICANT HAS A SUBSISTING COLLECTIVE AGREEMENT WITH THE RESPONDENT WHICH OVERLAPS IN PART WITH BOARD AREA #3.

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

13924-67-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. PRESTON FOUNDRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FOUNDRY AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PLANT CLERICAL STAFF, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		40
NUMBER OF PERSONS WHO CAST BALLOTS	39	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	24	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	15	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

13781-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V.  
STANIFORTH LUMBER & VENEER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES  
(OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BUSH OPERATIONS IN WILKES  
TOWNSHIP AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT  
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF,  
CLERKS AND SCALERS." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS	23	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	6	

13843-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V.  
THE GENERAL FIREPROOFING COMPANY (RESPONDENT) V. THE INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT  
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."  
(76 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		73
NUMBER OF PERSONS WHO CAST BALLOTS	72	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	37	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	35	

13869-67-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL  
847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. METROPOLITAN WIRE GOODS  
(CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	19
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

13870-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. PROCTOR-SILEX LTD (RESPONDENT) V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA, ON BEHALF OF LOCAL # 15252 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PICTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (224 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	213
NUMBER OF PERSONS WHO CAST BALLOTS	212
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	192
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	20

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

NO VOTE CONDUCTED

13463-67-R: CANADIAN OPTICAL WORKERS' UNION No. 202, N.C.C.L. (APPLICANT) V. KING OPTICAL COMPANY (RESPONDENT) V. INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (INTERVENER). (23 EMPLOYEES).

13601-67-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY (RESPONDENT) V. ONTARIO COUNCIL OF REGENTS FOR COLLEGES OF APPLIED ARTS & TECHNOLOGY (INTERVENER). (43 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 829 ).

13639-67-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. CAMBRIAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY (RESPONDENT) V. ONTARIO COUNCIL OF REGENTS FOR COLLEGES OF APPLIED ARTS & TECHNOLOGY (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (49 EMPLOYEES).

13644-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HI WAY MARKET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (135 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 835 ).

13672-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. DAREN CONSTRUCTION COMPANY LIMITED (RESPONDENT) (2 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 839 ).

13752-67-R: HOTEL, MOTEL, RESTAURANT EMPLOYEES AND BEVERAGE DISPENSERS UNION, LOCAL 757 AFL-CIO, CLC, FORT WILLIAM-PORT ARTHUR AND DISTRICT LABOUR COUNCIL AND THE ONTARIO PROVINCIAL OF CULINARY WORKERS, BARTENDERS AND HOTEL SERVICE EMPLOYEES (APPLICANT) V. PETRICK-WIEJAK CREST HOTEL LIMITED (RESPONDENT). (17 EMPLOYEES).

13767-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. OUR LADY OF MERCY HOSPITAL (RESPONDENT). (240 EMPLOYEES).

13794-67-R: THE METHODS, WAGE RATE AND SENIOR COST TECHNICIANS' ASSOCIATION OF ONTARIO, LOCAL 166, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. TRANE COMPANY OF CANADA, LIMITED (RESPONDENT). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 865 ).

13876-67-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ST. MARY'S OF THE LAKE HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (190 EMPLOYEES).

13940-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 (APPLICANT) V. PORT ARTHUR BOARD OF EDUCATION (RESPONDENT). (6 EMPLOYEES).

13968-67-R: INTERNATIONAL JEWELRY WORKERS UNION LOCAL 33 (APPLICANT) V. METRO DENTAL LABORATORY (RESPONDENT). (14 EMPLOYEES).

13972-67-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES OF ONTARIO LOCAL 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RICHARD HAZEL OPERATING AS NURSERY SCHOOL TRANSPORTATION (RESPONDENT). V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL SCHOOL BUS DRIVERS OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (11 EMPLOYEES IN THE UNIT).



CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1762-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE WNTREE COMPANY, LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND THEIR FULL-TIME HELPERS EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (5 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	0
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	5

12764-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED MOUNT DENNIS PLANT - #530 (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT AT ITS MT. DENNIS PLANT IN METROPOLITAN TORONTO." (4 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	0
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	4

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

12235-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. KRAFT FOODS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WILLIAMSTOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	30
NUMBER OF PERSONS WHO CAST BALLOTS	30
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	11
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	19

13796-67-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION NO. 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MURPHY OIL COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS ENGAGED IN RETAIL SERVICE STATION OPERATIONS."  
(20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	21
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	15

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

13942-67-R: FUEL BUS LIMOUSINE, PETROLEUM DRIVERS AND ALL EMPLOYEES OF ONTARIO LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BAYVIEW GLEN JR. SCHOOL OPERATED BY RICHARD HAZEL (RESPONDENT). (5 EMPLOYEES).

13956-67-R: GENERAL TRUCK DRIVERS UNION, LOCAL 879 (APPLICANT) V. CECIL SHAYER CONSTRUCTION LIMITED (RESPONDENT). (5 EMPLOYEES).

13947-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALNOR CONSTRUCTION LIMITED (RESPONDENT). (12 EMPLOYEES).

13948-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALNOR HOLDINGS LIMITED (RESPONDENT). (12 EMPLOYEES).

13955-67-R: LOCAL 29 BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA OF SAULT STE. MARIE FOR THE DISTRICT OF ALGOMA AND THE MANITOULIN ISLAND (APPLICANT) V. ALGOMA TILE (RESPONDENT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (INTERVENER). (3 EMPLOYEES).

13983-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 (APPLICANT) V. DRYDEN DISTRICT GENERAL HOSPITAL (RESPONDENT). (38 EMPLOYEES).

13989-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) V. AL. MURRAY CONCRETE CONST., 46 NORICE STREET OTTAWA, ONT. (RESPONDENT). (4 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING DECEMBER

13468-67-R: SHERIDAN MCGINTY (APPLICANT) V. FUR AND LEATHER WORKERS UNION LOCAL 82 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO (RESPONDENT) V. COOPER-WEEKS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF COOPER-WEEKS LIMITED AT ITS 501 ALLIANCE AVENUE PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (237 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	224
NUMBER OF PERSONS WHO CAST BALLOTS	224
NUMBER OF SPOILED BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	56
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	162

13563-67-R: MRS. BEATRICE LEVERE (APPLICANT) V. THE HOTELS CLUBS RESTAURANTS, TAVERNS, EMPLOYEE UNION LOCAL 261 (RESPONDENT) (DISMISSED). (26 EMPLOYEES).

(RE: BRUCE MACDONALD MOTOR LODGE,  
BELLS CORNER).

(SEE INDEXED ENDORSEMENT PAGE 874 ).

13705-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. NATIONAL PLASTERING COMPANY LIMITED (INTERVENER). (GRANTED). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 876 ).

13706-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. GOLDSTAR PLASTERING COMPANY LIMITED (INTERVENER). (GRANTED). (11 EMPLOYEES).

13707-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. TORONTO PLASTERING COMPANY LIMITED (INTERVENER). (GRANTED). (19 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 878 ).

13708-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. CORTINA PLASTERING COMPANY LIMITED (INTERVENER). (GRANTED). (18 EMPLOYEES).

13709-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. SPRING PLASTERING LIMITED (INTERVENER). (DISMISSED). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 887 ).

13782-67-R: GRANT READY MIX LIMITED (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (RESPONDENT). (DISMISSED). (9 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 892 ).

13783-67-R: BARRY PATCHETT AND A GROUP OF EMPLOYEES (APPLICANTS) V. THE UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, A.F.L.-C.I.O., LOCAL 1168 (RESPONDENT) V. BURNS FOODS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES IN THE KITCHENER OFFICES OF BURNS FOODS LIMITED, WITH THE EXCEPTION OF ASSISTANT DEPARTMENT MANAGERS AND THOSE ABOVE THE RANK OF ASSISTANT DEPARTMENT MANAGER, SUPERVISORS, LIVESTOCK BUYERS, PRIVATE SECRETARIES, CHEMISTS AND LABORATORY TECHNICIANS, INDUSTRIAL ENGINEERS, EMPLOYEES OF THE PERSONNEL DEPARTMENT, PLAN NURSES, PART TIME WORKERS, THAT IS THOSE EMPLOYED FOR 24 HOURS OR LESS IN A WEEK, TEMPORARY EMPLOYEES AND SALES STAFF." (36 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	31
NUMBER OF PERSONS WHO CAST BALLOTS	30
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	14
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	16

13855-67-R: JOHN STARKEY, DAVID TUTKOLUK, ROBERT PIERSON, AND OSWALD MAJZNER (APPLICANTS) V. UNITED AUTOMOBILE WORKERS OF AMERICA (U.A.W.) LOCAL 222 (RESPONDENT). (GRANTED).

(RE: HOGAN PONTIAC, BUICK, G.M.C. LIMITED, OSHAWA).

UNIT: "THE EMPLOYEES OF HOGAN PONTIAC, BUICK, G.M.C. LIMITED AT ITS NEW CAR DEPOT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).



NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	4

13897-67-R: ROY EMERSON ELDRIDGE (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 419, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (RESPONDENT) V. MCPHERSON WAREHOUSING COMPANY LTD. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF MCPHERSON WAREHOUSING COMPANY LTD. AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	8

13937-67-R: GRAND UNION HOTEL (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC (RESPONDENT) V. EMPLOYEE (OBJECTOR). (DISMISSED). (7 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 896 ).

13938-67-R: ROBERT EASTON EMPLOYEES REPRESENTATIVE DAVID BARRY CO., 680 KING ST. W. TORONTO (APPLICANT) V. INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKER'S UNION LOCAL NO. 8 346 SPADINA AVE. TORONTO 2B (RESPONDENT) V. DAVID BARRY CO. LTD. (INTERVENER). (DISMISSED). (22 EMPLOYEES).

13945-67-R: A GROUP OF EMPLOYEES OF SWEET & KERBEL LABORATORY LTD. (SEE ATTACHED LIST) (APPLICANT) V. DENTAL TECHNICIANS UNION LOCAL 43 (INTERNATIONAL JEWELRY WORKERS UNION) (RESPONDENT). (DISMISSED). (15 EMPLOYEES).

13967-67-R: MURRAY T. GOSTICK (APPLICANT) V. CANADIAN ELECTRICAL TRADE UNION (RESPONDENT). (GRANTED). (24 EMPLOYEES).

(RE: E. FRITZ ELECTRIC LIMITED,  
COUNTY OF WATERLOO).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

DECEMBER

13953-67-U: AUBIN PLUMBING & HEATING LIMITED (APPLICANT) V. MARCEL ROUSSEAU, WILLIAM MALLETTE, AURELE MALLETTE, EMILE GOUDREAU, TOM PETRYNA, JOSEPH GASCON, NORM BOULARD, WAYNE MITCHELL, AURELE LALANDE, GERRY MORIN, ROGER LALONDE (RESPONDENTS). (GRANTED).

(SEE INDEX ENDORSEMENT PAGE 898).

APPLICATION FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

13949-67-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. SCARBOROUGH CENTENARY HOSPITAL ASSOCIATION (RESPONDENT). (WITHDRAWN).

FINANCIAL STATEMENT

13965-67-M: GUTSFELD'S WELDING EXPERT IN BUILDUP & HARDFACING 13 LONDON ST. N. HAMILTON, ONT. PHONE LI 7-3056 (COMPLAINANT) V. UNITED STEELWORKERS UNION OF AMERICA (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 902).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

DECEMBER

13684-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. CANADIAN MOULDINGS LTD. (RESPONDENT). (DISMISSED).

13686-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. CANADIAN MOULDINGS LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 903).

13801-67-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) V. CARCINI SHOE COMPANY (RESPONDENT). (WITHDRAWN).

13865-67-U: RETAIL WHOLESALE AND DEPARTMENT STORE UNION AFL CIO CLC (COMPLAINANT) V. GRAND HOTEL (KINGSTON) LTD. CARRYING ON BUSINESS UNDER THE NAME OF TALBOT HOTEL, ST. THOMAS, ONTARIO (RESPONDENT). (WITHDRAWN).

13866-67-U: RETAIL WHOLESALE AND DEPARTMENT STORE UNION AFL CIO CLC (COMPLAINANT) V. GRAND HOTEL (KINGSTON) LTD. (RESPONDENT). (WITHDRAWN).

13867-67-U: RETAIL WHOLESALE AND DEPARTMENT STORE UNION AFL CIO CLC (COMPLAINANT) V. GRAND HOTEL (KINGSTON) LTD. (RESPONDENT). (WITHDRAWN).

13809-67-U: CANADIAN UNION OF OPERATING ENGINEERS (COMPLAINANT) V. CAMPBELL SOUP COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

13882-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. OUR LADY OF MERCY HOSPITAL (RESPONDENT). (WITHDRAWN).

13891-67-U: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO-CLC (COMPLAINANT) V. KAYSON PLASTIC & CHEMICALS LIMITED (RESPONDENT). (WITHDRAWN).

13933-67-U: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (COMPLAINANT) V. PROVIDENCE VILLA & HOSPITAL (RESPONDENT). (WITHDRAWN).

13966-67-U: FRANK MAULE (COMPLAINANT) V. A.M. WOOLREY OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN TORONTO BRITISH AMERICAN OIL LTD (OIL & CHEMICAL CO LTD.) K. G. COOKE HAMILTON CANADIAN WESTINGHOUSE LTD (ELECTRICAL INDUSTRY) N.H. WAGE COPPER CLIFF INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER HAMILTON STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE SAULT STE MARIE ALGOMA STEEL CO LTD. (STEEL INDUSTRY) (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 906 ).

13977-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. JOHN INGLIS COMPANY LTD. (RESPONDENT). (WITHDRAWN).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

DECEMBER

13633-67-M: THE BOARD OF EDUCATION FOR THE CITY OF SARNIA (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 908).

JURISDICTIONAL DISPUTE

13928(A)-67-JD: FOLEY CONSTRUCTION LIMITED (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL NUMBER 1758 (RESPONDENT) V. NORTHERN FLOORING COMPANY LIMITED (INTERVENER). (DISMISSED).

SEE INDEXED ENDORSEMENT PAGE 909).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13798-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V: CANADIAN HANSON & VAN WINKLE COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

13864-67-R: FRANCOIS CYR (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (RESPONDENT). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

13902-67-U: JAMES SPEIRS (COMPLAINANT) V. A.M. WOOLFREY, OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN, TORONTO, BRITISH AMERICAN OIL CO. LTD. (OIL & CHEMICAL CO.) K.G. COOKE, HAMILTON, CANADIAN WESTINGHOUSE LTD. (ELECTRICAL INDUSTRY) L.G. KERR, DRYDEN, DRYDEN PAPER CO. LTD. (PULP & PAPER INDUSTRY) N. H. WAGE, COPPER CLIFF, INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER, HAMILTON, STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. LTD. (STEEL INDUSTRY) (RESPONDENTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 919).

13966-67-U: FRANK MAULE (COMPLAINANT) V. A.M. WOOLFREY OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN TORONTO BRITISH AMERICAN OIL LTD (OIL & CHEMICAL CO LTD.) K. G. COOKE HAMILTON CANADIAN WESTINGHOUSE LTD (ELECTRICAL INDUSTRY) N.H. WAGE COPPER CLIFF INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER HAMILTON STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE SAULT STE MARIE ALGOMA STEEL CO LTD. (STEEL INDUSTRY) (RESPONDENTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 920).

INDEXED ENDORSEMENTS - CERTIFICATION

13456-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. KING OPTICAL COMPANY (RESPONDENT) V. CANADIAN OPTICAL WORKERS' UNION 202 - N.C.C.L. (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: M. LEVINSON, J. SACK AND ANGEL D. RIVERA FOR THE APPLICANT, A. J. CLARK AND G. ADAMSON FOR THE RESPONDENT, AND ROBIN B. CUMINE AND J. L. LABONTE FOR THE INTERVENER.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER  
O. HODGES: DECEMBER 13, 1967.

1. AT THE CONTINUED HEARING HELD IN THIS MATTER, THE BOARD HEARD EVIDENCE AND ARGUMENT RELATING TO THE MATTER OF THE PAYMENT OF \$1.00 IN RESPECT OF MEMBERSHIP IN THE CANADIAN OPTICAL WORKERS' UNION BY JOHN MCNANEY, AN EMPLOYEE OF THE RESPONDENT AND A PERSON IN RESPECT OF WHOM THE CANADIAN OPTICAL WORKERS' UNION HAD SUBMITTED EVIDENCE OF MEMBERSHIP.



2. MR. McNANEY, WHO HAD FOR A TIME BEEN PRESIDENT OF THE CANADIAN OPTICAL WORKERS' UNION 202, TESTIFIED THAT HE DID NOT PAY \$1.00 IN RESPECT OF HIS MEMBERSHIP IN THAT ORGANIZATION, ALTHOUGH HE DID SIGN A MEMBERSHIP CARD. MR. McNANEY SUBSEQUENTLY TRANSFERRED HIS LOYALTIES TO THE INTERNATIONAL UNION OF DOLL & TOY WORKERS. MR. McNANEY'S TESTIMONY IS IN SEVERAL IMPORTANT RESPECTS CORROBORATED BY THE EVIDENCE OF OTHER EMPLOYEES. THE EVIDENCE OF MR. JOSEPH LABONTE, AN ORGANIZER FOR THE NATIONAL COUNCIL OF CANADIAN LABOUR, THE PARENT ORGANIZATION OF THE CANADIAN OPTICAL WORKERS' UNION, CONFLICTS WITH THAT OF MR. McNANEY. MR. LABONTE'S EVIDENCE IS ALSO IN CERTAIN IMPORTANT RESPECTS CORROBORATED BY THAT OF AN EMPLOYEE OF THE RESPONDENT. THE ONLY EYE-WITNESS EVIDENCE AS TO THE PAYMENT WAS THAT OF MESSRS. McNANEY AND LABONTE, AND THIS EVIDENCE WAS CONTRADICTORY.

3. HAVING CONSIDERED ALL OF THE EVIDENCE AND HAVING REGARD TO THE Demeanour OF THE WITNESSES, AND THE MANNER IN WHICH THEY GAVE THEIR EVIDENCE, IT IS OUR FINDING, ON THE BALANCE OF PROBABILITIES, THAT MR. McNANEY DID NOT PAY \$1.00 IN CONNECTION WITH HIS APPLICATION FOR MEMBERSHIP IN THE CANADIAN OPTICAL WORKERS' UNION. WE DO NOT CONSIDER, HOWEVER, THAT MR. LABONTE, IN GIVING HIS EVIDENCE, WAS DELIBERATELY ADMITTING TO MISLEAD THE BOARD. THE CIRCUMSTANCES IN WHICH APPLICATIONS WERE SIGNED AND MONEY COLLECTED WERE CONFUSED, AND MR. LABONTE'S RECOLLECTION OF THEM WAS, IN OUR VIEW, HAZY.

4. IT FOLLOWS FROM OUR FINDING IN THE PRECEDING PARAGRAPH, THAT THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS MADE IN FORM 8 BY MR. LABONTE WAS NOT CORRECT. WHERE AN INCORRECT DECLARATION IS MADE BY A RESPONSIBLE UNION OFFICIAL, THE BOARD HAS IN PREVIOUS CASES REFUSED TO ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP. IT IS INHERENT IN THE BOARD'S PROCEDURES, THAT GREAT RELIANCE MUST BE PLACED ON THE DECLARATIONS OF RESPONSIBLE UNION OFFICIALS. IN ALL OF THE CIRCUMSTANCES OF THIS CASE, WE HAVE CONCLUDED THAT WE CANNOT RELY UPON FORM 8 OR ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP FILED BY THE CANADIAN OPTICAL WORKERS' UNION 202 - N.C.C.L.

5. THE APPLICATION OF THE CANADIAN OPTICAL WORKERS' UNION 202 - N.C.C.L. IS ACCORDINGLY DISMISSED.

6. THE REGISTRAR IS DIRECTED TO LIST THE MATTER FOR CONTINUATION OF HEARING.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

DECEMBER 13, 1967.

I DISSENT. ON ALL OF THE EVIDENCE, I WOULD HAVE FOUND THAT JOHN McNANEY DID PAY \$1.00 IN RESPECT OF HIS APPLICATION FOR MEMBERSHIP IN THE CANADIAN OPTICAL WORKERS' UNION.

13492-67-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT, AND  
GENERAL WORKERS (APPLICANT) V. R. E. LAW CRUSHED STONE LIMITED  
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
P. J. O'KEEFE AND J. E. C. ROBINSON.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER  
J. E. C. ROBINSON: DECEMBER 13, 1967.

1. BY ITS DECISION OF NOVEMBER 15TH, 1967, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER. BY LETTER OF THE SAME DATE THE REGISTRAR SENT TO THE PARTIES A COPY OF THE BOARD'S DECISION TOGETHER WITH A MEMORANDUM OF INSTRUCTIONS HAVING TO DO WITH THE MAKING OF ARRANGEMENTS FOR THE CONDUCTING OF THE VOTE.

2. BY LETTER DATED NOVEMBER 28TH AND BY LETTER DATED NOVEMBER 29TH, COUNSEL FOR THE RESPONDENT AND THE REPRESENTATIVE OF THE APPLICANT, RESPECTIVELY, ADVISED THE REGISTRAR THAT THE PARTIES HAD MET AND MADE ARRANGEMENTS FOR THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD. THE DETAILS OF THE ARRANGEMENTS MADE FOR THE TAKING OF THE VOTE AGREED UPON BY THE PARTIES ARE SET OUT IN THE LETTER OF COUNSEL FOR THE RESPONDENT. COUNSEL ALSO ENCLOSED COPIES OF THE VOTERS' LIST WHICH WAS DRAWN UP IN ACCORDANCE WITH PARAGRAPH 19 OF THE BOARD'S DECISION OF NOVEMBER 15TH, 1967. THE LIST CONTAINS THE NAMES OF 86 PERSONS. THE APPLICANT, HOWEVER, HAS CHALLENGED THE ELIGIBILITY TO VOTE OF 16 PERSONS ON THE LIST ALL OF WHOM ARE CLASSIFIED AS LEAD HANDS AND THE ELIGIBILITY OF ONE PERSON WHO IS THE SUBJECT OF A COMPLAINT MADE BY THE APPLICANT PURSUANT TO SECTION 65 OF THE ACT.

3. IN ITS DECISION OF AUGUST 31ST, 1967, THE BOARD FOUND THAT A UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT AT ITS QUARRY AND PLANTS IN THE TOWNSHIP OF WAINFLEET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD CONSTITUTED AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. BY THE ABOVE DESCRIPTION, LEAD HANDS, WHO ARE BELOW THE RANK OF FOREMEN, ARE INCLUDED IN THE BARGAINING UNIT. AS IS NOTED IN PARAGRAPH 3 OF THE BOARD'S DECISION OF NOVEMBER 15TH, 1967, DURING THE DISCUSSION OF THE BARGAINING UNIT AT THE BOARD HEARING IN THIS MATTER REFERENCE WAS MADE TO LEAD HANDS AND NO SUGGESTION WAS MADE BY THE APPLICANT THAT LEAD HANDS SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. RATHER, THE PARTIES AGREED THAT THE LINE OF MANAGEMENT WAS "FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN". IN PARAGRAPHS 10, 11 AND 12 OF ITS DECISION OF NOVEMBER 15TH, 1967, THE BOARD DEALT WITH THE CHALLENGES MADE BY THE APPLICANT WITH RESPECT TO THE STATUS OF DONALD DAYBOLL, BRUCE MCKNIGHT AND ARTHUR STORM, ALL OF WHOM ARE CLASSIFIED AS LEAD HANDS, AND FOR THE REASONS OUTLINED IN THE ABOVE REFERRED TO PARAGRAPHS RULED THAT THE APPLICANT WAS TOO LATE IN MAKING ITS CHALLENGE AS TO THEIR STATUS.

4. WE WOULD EMPHASIZE THAT AT THE BOARD HEARING ON AUGUST 24TH, 1967, THE APPLICANT AGREED THAT THE LINE OF MANAGEMENT WAS FOREMAN AND PERSONS ABOVE THE RANK OF FOREMAN AND THAT LEAD HANDS WERE INCLUDED IN THE BARGAINING UNIT. YET BY LETTER DATED NOVEMBER 30TH, 1967, THE APPLICANT CLAIMS THAT IT IS CHALLENGING THE LEAD HANDS BY REASON OF THE FACT THAT ALL OR SOME OF THEM EXERCISE MANAGERIAL FUNCTIONS. IN OTHER WORDS, THE APPLICANT, IN EFFECT, IS SUBMITTING THAT LEAD HANDS AS A CLASSIFICATION SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. THIS POSITION IS IN CONFLICT WITH THAT ADOPTED BY THE APPLICANT AT THE BOARD HEARING.

5. IF, IN FACT, THE APPLICANT HAD ANY REAL DOUBTS AS TO WHOM THE RESPONDENT MIGHT HAVE CLASSIFIED AS LEAD HANDS ON ITS LIST, THE BOARD REASONABLY WOULD HAVE EXPECTED THE APPLICANT TO INQUIRE AT THE HEARING AS TO THE IDENTITY OF THOSE PERSONS CLASSIFIED AS LEAD HANDS AND TO CHALLENGE THEIR STATUS IN THE EVENT THAT THE APPLICANT WAS OF THE OPINION THAT THEY EXERCISED MANAGERIAL FUNCTIONS. ONE CERTAINLY WOULD HAVE EXPECTED THE APPLICANT TO FOLLOW THIS COURSE OF ACTION, IN LIGHT OF ITS "ELEVENTH HOUR" CHALLENGE THAT DAYBOLL, MCKNIGHT AND STORM, WHO WERE LISTED BY THE RESPONDENT AS LEAD HANDS, EXERCISED MANAGERIAL FUNCTIONS. NO SUCH INQUIRIES, HOWEVER, WERE MADE AT ANY TIME DURING THE BOARD HEARING, AND THE STATUS OF NO ONE, OTHER THAN DAYBOLL, MCKNIGHT AND STORM, WAS CHALLENGED BY THE APPLICANT AT THE HEARING. ALL 16 PERSONS CLASSIFIED AS LEAD HANDS ON THE LIST FILED BY THE RESPONDENT WERE INCLUDED IN THE COUNT FOR PURPOSES OF DETERMINING THE NUMBER OF PERSONS IN THE BARGAINING UNIT AS OF THE DATE OF THE MAKING OF THE APPLICATION AND FOR PURPOSES OF DETERMINING THE MEMBERSHIP POSITION OF THE APPLICANT AS OF THE TERMINAL DATE.

6. WE ARE SATISFIED THAT, AT THE TIME OF THE BOARD HEARING, WITH THE EXCEPTION OF DAYBOLL, MCKNIGHT AND STORM, THE APPLICANT HAD NO QUARREL WITH THE INCLUSION OF THE OTHER 13 LEAD HANDS IN THE BARGAINING UNIT. THE APPLICANT FAILED TO FILE ITS CHARGES OF MANAGEMENT SUPPORT OF THE PETITIONS FILED IN OPPOSITION TO THE APPLICATION WITHIN THE PROPER TIME AND FAILED IN ITS EFFORTS TO CHALLENGE THE STATUS OF DAYBOLL, MCKNIGHT AND STORM. IT WOULD APPEAR THAT THE APPLICANT IS ATTEMPTING NOW TO AVOID THE CONSEQUENCES OF ITS OWN CONDUCT BY THE DEVICE OF CHALLENGING THE ELIGIBILITY TO VOTE OF ALL THE LEAD HANDS IN THE EMPLOY OF THE RESPONDENT. HOWEVER, HAVING ACQUIESCED AT THE BOARD HEARING TO THE INCLUSION OF THE LEAD HANDS IN THE BARGAINING UNIT, THE APPLICANT IS IN NO POSITION AT THIS TIME TO CHALLENGE THEIR ELIGIBILITY TO CASE BALLOTS IN THE REPRESENTATION VOTE DIRECTED BY THE BOARD.

7. ACCORDINGLY, IT IS THE RULING OF THE BOARD THAT THE NAMES OF THE 16 PERSONS CLASSIFIED AS LEAD HANDS ON THE VOTERS' LIST, WHO ARE CHALLENGED BY THE APPLICANT, ARE ELIGIBLE TO CAST BALLOTS IN THE REPRESENTATION VOTE DIRECTED BY THE BOARD, SUBJECT ONLY TO THE PROVISIONS OF PARAGRAPH 19 OF THE BOARD'S DECISION OF NOVEMBER 15TH, 1967.

8. HAVING REGARD TO THE FACT THAT W. ROBINSON IS THE SUBJECT OF A COMPLAINT MADE BY THE APPLICANT PURSUANT TO SECTION 65 OF THE ACT, THE BOARD DIRECTS THAT HE BE PERMITTED TO CAST A BALLOT IN THE REPRESENTATION VOTE AND THAT HIS BALLOT BE SEGREGATED PENDING A FURTHER RULING BY THE BOARD.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

DECEMBER 13, 1967.

I AGREE WITH THE MAJORITY DECISION WITH REGARD TO W. ROBINSON WHO IS AT THE PRESENT TIME THE SUBJECT OF A COMPLAINT PURSUANT TO SECTION 65 OF THE ACT. I AGREE THAT HE SHOULD BE PERMITTED TO CAST A BALLOT IN THE REPRESENTATION VOTE AND THAT HIS BALLOT BE SEGREGATED PENDING A FURTHER RULING BY THE BOARD.

I DISSENT FROM THE DECISION OF THE MAJORITY WHEREIN THEY DENY THE APPLICANT UNION'S REQUEST FOR AN INQUIRY INTO THEIR ALLEGATION THAT THERE ARE CERTAIN MANAGERIAL PERSONS INCLUDED ON THE LIST OF EMPLOYEES SUBMITTED BY THE RESPONDENT COMPANY IN THE PROPOSED VOTING CONSTITUENCY.

THE POINT AT ISSUE IN THE INSTANT CASE IS QUITE CLEAR. IT IS SIMPLY A CHALLENGE BY THE APPLICANT UNION AS TO THE CORRECTNESS OF THE PROPOSED LIST OF EMPLOYEES SUPPLIED BY THE RESPONDENT. THIS CHALLENGE IS BASED ON THE UNDERSTANDING OF THE APPLICANT THAT CERTAIN PEOPLE INCLUDED ON THAT LIST ARE MANAGERIAL PERSONS.

I SUBMIT THAT THE MAJORITY ARE IN ERROR IN CONFUSING THE POINT AT ISSUE BY REFERRING BACK TO CERTAIN OF THE EVIDENCE IN THE APPLICANT UNION'S ORIGINAL APPLICATION FOR CERTIFICATION. THE REFERENCE TO THE LEAD HANDS AND THE AGREEMENT ON THE WORDING OF THE DESCRIPTION OF THE BARGAINING UNIT IS NOT RELEVANT TO THE CHALLENGE OF THE APPLICANT TO THE VOTERS' LIST. WE ARE NOW AT THE STAGE WHERE A REPRESENTATION VOTE HAS BEEN ORDERED BY THE BOARD AND THE PARTIES ARE IN THE PROCESS OF DETERMINING THE INCLUSION OR EXCLUSION OF CERTAIN NAMED PERSONS ON THE VOTERS' LIST SUBMITTED BY THE RESPONDENT. THE APPLICANT UNION, HAVING REVIEWED THE PROPOSED VOTERS' LIST SUBMITTED BY THE RESPONDENT, TAKES THE POSITION THAT CERTAIN NAMED PERSONS ON THAT LIST SHOULD NOT BE ON THE LIST FOR THE PURPOSE OF THE PENDING VOTE, SINCE, FROM THEIR KNOWLEDGE, THE LIST INCLUDES A NUMBER OF MANAGERIAL PERSONS. THE APPLICANT HAS REQUESTED THE BOARD TO LOOK INTO THE LIST TO DETERMINE IF, IN FACT, THESE CHALLENGED PERSONS EXERCISE MANAGERIAL FUNCTIONS. THE APPLICANT HAD EVERY REASON TO EXPECT THAT THE BOARD WOULD GRANT THEIR REQUEST AND SET IN MOTION THE BOARD'S NORMAL PROCEDURES TO ESTABLISH WHETHER OR NOT SUCH LIST DOES INCLUDE MANAGERIAL PERSONS.

IN THE ABSENCE OF AN INQUIRY INTO THE LIST, I AM IN NO POSITION AT THIS TIME TO MAKE A REASONABLE AND FAIR DECISION TO THE EFFECT THAT



ALL THE EMPLOYEES ON THE LIST SUPPLIED BY ONE OF THE PARTIES IN THIS MATTER ARE EMPLOYEES WHO ARE ELIGIBLE TO VOTE IN ACCORDANCE WITH THE BOARD'S DECISION OF NOVEMBER 15TH, 1967. TAKING THE EXTREME POSITION, IT MAY VERY WELL BE THAT IN MATTERS OF THIS KIND A RESPONDENT COMPANY COULD INCLUDE ON ITS LIST OF EMPLOYEES SUCH PERSONS AS ITS PERSONNEL DIRECTOR OR THE PRESIDENT OF THE COMPANY. THE ONLY MANNER WHICH AN APPLICANT UNION HAS OF PROTECTING ITS INTEREST IN REPRESENTATION VOTES IS THE RIGHT TO CHALLENGE THE LIST AND HAVE THE BOARD DETERMINE THAT SUCH LIST INCLUDES ONLY THOSE PERSONS WHO ARE EMPLOYEES ELIGIBLE TO BE INCLUDED IN THE BARGAINING UNIT.

DENYING AN APPLICANT'S REQUEST TO CHALLENGE A LIST OF EMPLOYEES SUBMITTED BY A RESPONDENT IS TANTAMOUNT TO GIVING A FREE HAND TO A RESPONDENT COMPANY TO INCLUDE ON A VOTERS' LIST ANY PERSON OR PERSONS THAT THEY SO WISH. THE POSSIBLE EFFECT OF THE MAJORITY DECISION IS TO ALLOW A RESPONDENT COMPANY A FREE HAND TO INCLUDE ALL OF ITS TOP MANAGERIAL PEOPLE IN SUCH A LIST AND TO GERRYMANDER THE VOTERS' LIST AT WILL. LEST I BE MISUNDERSTOOD, I HASTEN TO ADD THAT I AM NOT SUGGESTING THAT THE RESPONDENT COMPANY IN THE INSTANT CASE HAS RESORTED TO ANY OF THE FOREGOING TACTICS.

IT IS A BASIC PRINCIPLE IN BRITISH LAW THAT JUSTICE MUST NOT ONLY BE DONE BUT IT MUST APPEAR TO BE DONE. THE DENIAL OF THE APPLICANT UNION'S REQUEST IN THE INSTANT CASE QUITE CLEARLY IS AT VARIANCE WITH THIS BASIC CONCEPT OF JUSTICE AND SHROUDS EVEN THE APPEARANCE OF JUSTICE BEING DONE IN THIS MATTER.

I ACCORDINGLY WOULD GRANT THE APPLICANT'S REQUEST FOR AN INQUIRY INTO ITS ALLEGATION THAT CERTAIN PERSONS APPEARING ON THE VOTERS' LIST SUPPLIED BY THE RESPONDENT ARE MANAGERIAL.

13601-67-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT)  
V. FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY (RESPONDENT) V.  
ONTARIO COUNCIL OF REGENTS FOR COLLEGES OF APPLIED ARTS & TECHNOLOGY  
(INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: G. O. JONES FOR THE APPLICANT, JOHN P. SANDERSON,  
DR. J.A. COLVIN AND F.R. VON VEH FOR THE RESPONDENT, C.L. DUBIN, Q.C.,  
FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 4, 1967.

. . .

2. THE APPLICANT IS APPLYING TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND TEACHING STAFF.

3. COUNSEL FOR A BODY IDENTIFIED AS THE ONTARIO COUNCIL OF REGENTS FOR COLLEGES OF APPLIED ARTS AND TECHNOLOGY (HEREINAFTER REFERRED TO AS THE COUNCIL OF REGENTS) REQUESTED LEAVE OF THE BOARD TO BE ADDED AS A PARTY ON THE GROUNDS THAT THE COUNCIL OF REGENTS HAD A DIRECT INTEREST IN THE PROCEEDINGS. MORE PARTICULARLY, COUNSEL SUBMITTED THAT THE RESPONDENT IS A CROWN AGENCY AND AS SUCH IS EXCLUDED FROM THE PROVISIONS OF THE LABOUR RELATIONS ACT. ALTERNATIVELY, COUNSEL SUBMITTED THAT THE BOARD OF GOVERNORS OF THE RESPONDENT DO NOT HAVE THE AUTHORITY TO BARGAIN IN RELATION TO MATTERS WHICH ARE ESSENTIAL TO EVERY COLLECTIVE AGREEMENT. IN LIGHT OF THE REPRESENTATIONS OF COUNSEL FOR THE COUNCIL OF REGENTS AND WITH THE CONCURRENCE OF THE REPRESENTATIVE OF THE APPLICANT AND COUNSEL FOR THE RESPONDENT, THE BOARD, PURSUANT TO SECTION 54 OF ITS RULES OF PROCEDURE AND REGULATIONS, DIRECTED THAT THE COUNCIL OF REGENTS BE ADDED AS A PARTY TO THE INSTANT APPLICATION.

4. IN SUPPORT OF HIS ORIGINAL SUBMISSION, COUNSEL FOR THE COUNCIL OF REGENTS PLACED RELIANCE ON THE DECISION OF THIS BOARD IN THE ONTARIO FOOD TERMINAL BOARD CASE (1961) C.L.L.C. VOL. 2, ¶16,216 AND THE JUDGMENT OF LAIDLAW J.A. (1963) C.L.L.C. VOL. 2, ¶15,464 IN WHICH THE ONTARIO COURT OF APPEAL UPHELD THE BOARD'S DECISION. COUNSEL REFERRED TO MANY OF THE AUTHORITIES CITED IN THE BOARD'S DECISION AND THE JUDGMENT OF THE COURT OF APPEAL AS WELL AS ADDITIONAL CASES WHICH HE CONTENDS LEND ADDED SUPPORT TO HIS POSITION. COUNSEL RELATED ALL OF THESE DECISIONS TO THE AUTHORITY VESTED IN THE BOARD OF GOVERNORS OF THE RESPONDENT BY VIRTUE OF THE DEPARTMENT OF EDUCATION ACT R.S.O. 1960 C. 94, AS AMENDED BY SECTION 14A STATUTES OF ONTARIO 1965 C. 28. COUNSEL ALSO RELIED ON THE PROVISIONS OF THE CROWN AGENCY ACT R.S.O. 1960 C. 81. COUNSEL FOR THE RESPONDENT ADOPTED THE SUBMISSIONS OF COUNSEL FOR THE COUNCIL OF REGENTS AND EMPHASIZED CERTAIN FEATURES OF A NUMBER OF DECISIONS CITED BY COUNSEL FOR THE COUNCIL OF REGENTS.

5. PRIOR TO DEALING WITH THE PROVISIONS OF SECTION 14A OF THE DEPARTMENT OF EDUCATION ACT AND THE REGULATIONS MADE PURSUANT THERETO, WE WOULD FIRST SET OUT THE TEST TO BE APPLIED IN DETERMINING WHETHER AN ENTITY OR BODY IS AN AGENT OF THE CROWN. THE BOARD IN THE ONTARIO FOOD TERMINAL BOARD CASE (SUPRA) AT 960 DESCRIBED THE TEST IN THE FOLLOWING TERMS:

ON EXAMINING THE AUTHORITIES IN THIS MATTER, IT SEEMS CLEAR THAT THE TEST TO BE APPLIED IS THE DEGREE OF CONTROL EXERCISED OR RETAINED BY THE CROWN OR, PUT IN SLIGHTLY DIFFERENT FASHION, HAS THE BODY UNDER CONSIDERATION DISCRETIONARY POWER OF ITS OWN, FREE FROM CONTROL BY, OR CONSULTATION WITH, THE CROWN ...

HOWEVER, JUST WHAT AMOUNTS TO A SUFFICIENT DEGREE OF CONTROL BY THE CROWN TO MAKE THE BODY A SERVANT OR AGENT, OR CONVERSELY, JUST WHAT AMOUNT OF DISCRETIONARY POWER MUST BE POSSESSED

BY THE BODY TO MAKE IT INDEPENDENT OF THE CROWN, IS NOT AN EASY MATTER TO DEFINE. IT SEEMS TO BE A REASONABLE CONCLUSION FROM THE AUTHORITIES, HOWEVER, THAT THE MERE FACT THAT SOME DEGREE OF CONTROL IS RETAINED BY THE CROWN DOES NOT NECESSARILY MAKE THE BODY AN AGENT OR SERVANT OF THE CROWN.

6. THE BOARD IN ITS DECISION CONSIDERED A NUMBER OF CASES IN WHICH THE SAME ISSUE HAD ARISEN AND THE FACTORS OF CONTROL THAT WERE TAKEN INTO ACCOUNT IN DECIDING WHETHER THE BODY IN QUESTION WAS AN AGENT OR SERVANT OF THE CROWN. BRIEFLY, IN THE METROPOLITAN MEAT INDUSTRY BOARD V SHEEDY CASE [1927] A.C. 899, IT WAS HELD THAT IF THE BODY HAS WIDE POWERS WHICH ARE GIVEN TO IT TO BE EXERCISED AT ITS OWN DISCRETION AND WITHOUT CONSULTING THE CROWN, THE FACT THAT THE BOARD MAY BE APPOINTED BY THE CROWN, THAT ITS INSPECTORS AND OTHER OFFICERS ARE APPOINTED BY THE CROWN ON THE RECOMMENDATION OF THE BOARD, AND THAT THE CROWN OR ITS REPRESENTATIVE COULD VETO CERTAIN ACTIONS OF THE BOARD, WAS NOT SUFFICIENT TO SAY THAT THE BOARD WAS ACTING MAINLY, IF AT ALL, AS A SERVANT OF THE CROWN. IN THE CASE OF THE GOVERNORS OF THE UNIVERSITY OF TORONTO V MINISTER OF NATIONAL REVENUE [1950] Ex. C.R. 117 IT WAS HELD THAT THE FACT THAT A BODY WAS APPOINTED IN PART BY THE LIEUTENANT-GOVERNOR-IN-COUNCIL, THAT IN CERTAIN ASPECTS OF FINANCING IT WAS SUBJECT TO THE CONTROL OF THE LIEUTENANT-GOVERNOR-IN-COUNCIL, THAT ITS ACCOUNTS WERE AUDITED BY THE PROVINCIAL AUDITOR OR SOMEONE APPOINTED BY HIM AND THAT IT MADE AN ANNUAL REPORT TO THE LIEUTENANT-GOVERNOR-IN-COUNCIL, WHICH REPORT WAS TO BE LAID BEFORE THE LEGISLATIVE ASSEMBLY, DID NOT MAKE THE BODY A SERVANT OR AGENT OF THE CROWN IN VIEW OF THE EXTENT OF INDEPENDENT ACTION WHICH IT RETAINED.

7. BOTH THIS BOARD AND THE ONTARIO COURT OF APPEAL FOUND THAT BY THE PROVISIONS OF THE ONTARIO FOOD TERMINAL ACT R.S.O. 1960 c. 272, THE BOARD ESTABLISHED UNDER THAT ACT HAD INDEPENDENT FREEDOM OF ACTION, ALTHOUGH THERE WAS SOME DEGREE OF CONTROL EXERCISED BY THE CROWN. FOR INSTANCE, THE BOARD WAS APPOINTED BY THE LIEUTENANT-GOVERNOR-IN-COUNCIL, AND ALTHOUGH THE BOARD APPOINTED THE MANAGER OF THE TERMINAL AND SUCH OTHER OFFICERS AS WERE PRESCRIBED BY REGULATIONS AND FIXED THEIR REMUNERATION, THIS WAS SUBJECT TO THE APPROVAL OF THE LIEUTENANT-GOVERNOR-IN-COUNCIL. MOREOVER, WHILE THE BOARD WAS EMPOWERED TO MAKE REGULATIONS RESPECTING THE OPERATIONS, MANAGEMENT AND MAINTENANCE OF THE TERMINAL, THIS ALSO WAS SUBJECT TO THE APPROVAL OF THE LIEUTENANT-GOVERNOR-IN-COUNCIL. ON THE OTHER HAND, THE BOARD HAD COMPLETE CONTROL OVER THE APPOINTMENT OF ITS EMPLOYEES, THEIR NUMBERS, SALARIES AND REMUNERATIONS. IT HAD POWER TO BORROW MONEY, TO ISSUE SECURITIES AND TO ACQUIRE AND HOLD LAND IN ITS OWN NAME. THE BOARD, MOREOVER, HAD SOME DISCRETION IN DEALING WITH SURPLUS MONEYS REMAINING AFTER PAYING FOR OPERATING EXPENSES, INTEREST ON INDEBTEDNESS AND REPAYMENT OF PRINCIPAL MONEYS PAYABLE IN THAT YEAR. THE BOARD, FURTHER, COULD BE SUED OR INSTITUTE OR DEFEND PROCEEDINGS IN ANY COURT. IT ALSO COULD APPROVE THE OPERATIONS OF MARKETS IN CERTAIN AREAS AND, SUBJECT TO REGULATIONS, MAKE RULES WITH RESPECT TO CERTAIN ENUMERATED MATTERS.

8. THIS BOARD AND THE ONTARIO COURT OF APPEAL IN THE ONTARIO FOOD TERMINAL BOARD CASE (SUPRA) ADOPTED THE REASONING OF THE ONTARIO COURT OF APPEAL AND THE SUPREME COURT OF CANADA IN THE JAMIESON'S FOOD LIMITED V. ONTARIO FOOD TERMINAL BOARD CASE (1959), 168 (C.A.), [1961] S.C.R. 276, IN WHICH THE COURTS HELD THAT THE ONTARIO FOOD TERMINAL ACT DID NOT RESTRICT THE POWER OF THE BOARD TO DO SUCH ACTS AS IN ITS DISCRETION IT DEEMED NECESSARY OR EXPEDIENT WITH RESPECT TO THE OPERATION, MANAGEMENT AND MAINTENANCE OF THE TERMINAL, EXCEPT AS MIGHT BE THE SUBJECT OF REGULATIONS MADE BY THE BOARD, ALTHOUGH SUBJECT TO THE APPROVAL OF THE LIEUTENANT-GOVERNOR-IN-COUNCIL. THIS BOARD, HOWEVER, WENT ON TO EXPRESS THE VIEW THAT THE TERMINAL BOARD HAD THE POWER TO OPERATE THE TERMINAL APART FROM REGULATIONS IF IT CHOSE TO DO SO AND WAS NOT CONTROLLED BY THE CROWN IN THIS RESPECT. THIS BOARD FOUND THAT THE POWERS OF THE ONTARIO FOOD TERMINAL BOARD WERE ANALOGOUS TO THE POWERS OF THE BOARD IN THE METROPOLITAN MEAT INDUSTRY BOARD V. SHEEDY CASE (SUPRA) AND CONCLUDED ON THE BASIS OF THE AUTHORITIES THAT, AT COMMON LAW, THE RESPONDENT WAS NOT A SERVANT OR AGENT OF THE CROWN. THE ONTARIO COURT OF APPEAL REACHED THE SAME CONCLUSION FINDING THAT THE TERMINAL BOARD DID NOT ACT AS A CROWN AGENCY IN ITS SERVICE BUT THAT TO THE CONTRARY, ALL OF ITS ACTIONS IN CARRYING OUT THE OBJECTS FOR WHICH IT WAS CONSTITUTED AND INCORPORATED BY STATUTE WERE ITS OWN ACTS AS DISTINGUISHED FROM ACTS OF OR FOR THE CROWN.

9. THIS BOARD AND THE COURT OF APPEAL DISTINGUISHED THE CITY OF HALIFAX V HALIFAX HARBOUR COMMISSIONERS CASE [1935] S.C.P. 215, IN WHICH THE SUPREME COURT OF CANADA FOUND THAT THE HALIFAX HARBOUR COMMISSIONERS WERE SERVANTS OF THE CROWN. THE COMMISSIONERS, HOWEVER, UNDER THE RELEVANT STATUTE COULD NOT TAKE POSSESSION OF ANY PROPERTY BELONGING TO THE HARBOUR PROPERTY, OR ACQUIRE OR DISPOSE OF PROPERTY WITHOUT THE CONSENT OF THE CROWN, NOR COULD THEY ACQUIRE CAPITAL FUNDS OR APPLY THEM EXCEPT UNDER THE CONTROL OF THE CROWN. ALL EXPENDITURES AND REVENUES IN THE MAINTENANCE OF SERVICE WAS UNDER THE CONTROL AND SUPERVISION OF THE DEPARTMENT OF MARINE AND FISHERIES. THE SALARIES AND COMPENSATION PAYABLE TO OFFICERS AND SERVANTS WERE DETERMINED UNDER THE AUTHORITY OF THE FEDERAL GOVERNMENT. THE REGULATIONS NECESSARY FOR THE CONTROL OF THE HARBOUR, THE HARBOUR WORK, OFFICERS AND SERVANTS COULD ONLY BE EFFECTIVE UNDER THE SAME AUTHORITY. THIS BOARD SIMILARLY DISTINGUISHED THE SIMMONS V NIAGARA PARKS COMMISSION CASE [1945] O.R. 326 AND 802 IN WHICH IT WAS HELD THAT THE COMMISSION WAS A SERVANT OF THE CROWN. THE CONTROLS EXERCISED BY THE LIEUTENANT-GOVERNOR-IN-COUNCIL WERE SIMILAR TO THOSE EXERCISED BY THE PRIVY COUNCIL OF CANADA OVER THE HALIFAX HARBOUR COMMISSIONERS. THAT IS TO SAY, BOTH COMMISSIONS WERE SUBJECT TO CONTROL AT EVERY TURN IN EXECUTING THEIR POWERS.

10. COUNSEL FOR THE COUNCIL OF REGENTS AND COUNSEL FOR THE RESPONDENT BOTH RELIED ON THE JUDGMENT OF LORD REID IN THE HOUSE OF LORDS DECISION IN BANK VOOR HANDEL EN SCHEEPVAART N.V. V. ADMINISTRATOR OF HUNGARIAN PROPERTY [1954] 1 ALL E.R. 969. WITHOUT GOING INTO THE FACTS OF THE CASE, THE CENTRAL ISSUE WAS WHETHER THE CUSTODIAN OF ENEMY PROPERTY WAS A SERVANT OF THE CROWN, WHICH WAS ANSWERED BY THE LORDS IN THE AFFIRMATIVE. LORD REID EXPRESSED HIS VIEW OF THE STATE OF THE LAW, IN PART, IN THE FOLLOWING TERMS AT 982:



IN MY JUDGMENT, THE QUESTION WHETHER THE CUSTODIAN IS A SERVANT OF THE CROWN DEPENDS ON THE DEGREE OF CONTROL WHICH THE CROWN THROUGH ITS MINISTERS CAN EXERCISE OVER HIM IN THE PERFORMANCE OF HIS DUTIES. THE FACT THAT A STATUTE HAS AUTHORIZED HIS APPOINTMENT IS, I THINK, IMMATERIAL, BUT THE DEFINITION IN THE STATUTE OF HIS RIGHTS, DUTIES AND OBLIGATIONS IS HIGHLY IMPORTANT....

IT MAY BE THAT, IN PRACTICE, THE CUSTODIAN IS GIVEN FAIRLY WIDE DISCRETION. A MASTER OFTEN GIVES WIDE DISCRETION TO HIS SERVANTS. THE QUESTION IS NOT HOW MUCH INDEPENDENCE THE CUSTODIAN, IN FACT, ENJOYS, BUT HOW MUCH HE CAN ASSERT AND INSIST ON BY REASON OF THE TERMS OF HIS APPOINTMENT OR THE NATURE OF HIS OFFICE.

LORD REID CITED IN SUPPORT OF HIS VIEWS FOX V NEWFOUNDLAND GOVERNMENT [1898] A.C. 672 AND METROPOLITAN MEAT INDUSTRY BOARD V SHEEDY [1927] A.C. 905.

11. HAVING IN MIND THE TEST OF THE DEGREE OF CONTROL AND THE MANNER IN WHICH IT HAS BEEN APPLIED IN THE ABOVE CASES, LET US NOW CONSIDER THE POWERS VESTED IN THE BOARD OF GOVERNORS OF THE RESPONDENT COLLEGE. SECTION 14A OF THE DEPARTMENT OF EDUCATION ACT PROVIDES THAT THE BOARD OF GOVERNORS ARE TO HAVE SUCH POWERS AND DUTIES, IN ADDITION TO THOSE UNDER THE CORPORATION ACT "AS VARIED BY THE REGULATIONS, AS MAY BE PROVIDED BY THE REGULATIONS." (EACH COLLEGE, WE WOULD MENTION, IS A CORPORATION). THE BOARD OF GOVERNORS CAN ENTER INTO AGREEMENTS WITH ORGANIZATIONS REPRESENTING INDUSTRY, COMMERCE OR PROFESSIONAL ORGANIZATIONS AND UNIVERSITIES. THIS AUTHORITY, HOWEVER, IS SUBJECT TO THE APPROVAL OF THE MINISTER OF EDUCATION. THE COST OF THE ESTABLISHMENT, MAINTENANCE AND CONDUCT OF THE COLLEGES IS TO BE PAID OUT OF MONEYS APPROPRIATED THEREFOR BY THE LEGISLATURE AND OUT OF MONEYS RECEIVED FROM OTHER SOURCES, I.E., THE FEDERAL GOVERNMENT, OTHER ORGANIZATIONS AND FEES. THE MINISTER, SUBJECT TO THE APPROVAL OF THE LIEUTENANT-GOVERNOR-IN-COUNCIL, HAS AUTHORITY AMONG OTHER THINGS TO MAKE REGULATIONS WITH RESPECT TO THE COLLEGES, INCLUDING THE APPOINTMENT AND COMPOSITION OF THE BOARD OF GOVERNORS, ITS POWERS AND DUTIES, ALL ASPECTS OF THE PROGRAM OF INSTRUCTIONS, ADMISSION AND DIPLOMA REQUIREMENTS AND THE QUALIFICATIONS AND CONDITIONS OF SERVICE OF THE TEACHING STAFF. BY THE REGULATIONS PASSED UNDER SECTION 14A, THE PROGRAM OF EDUCATION PROPOSED BY THE BOARD OF GOVERNORS MUST BE APPROVED BY THE COUNCIL OF REGENTS (WHICH IS ALSO APPOINTED BY THE MINISTER SUBJECT TO THE APPROVAL OF THE LIEUTENANT-GOVERNOR-IN-COUNCIL). THE COUNCIL OF REGENTS MAY ALTER OR MODIFY THE RECOMMENDATIONS OF THE BOARD OF GOVERNORS, AND IN TURN ANY PROPOSALS OR RECOMMENDATIONS MUST BE APPROVED BY THE MINISTER. IN THE CASE OF A BUILDING PROGRAM, WHILE THE BOARD OF GOVERNORS MAY CHOOSE THE SITE AND EMPLOY AN ARCHITECT, ALL PLANS AND ESTIMATES OF COSTS OF CONSTRUCTION ULTIMATELY MUST BE APPROVED BY THE

MINISTER. FINALLY, WHILE THE BOARD OF GOVERNORS MAY APPOINT A DIRECTOR OF THE COLLEGE, PRINCIPALS FOR DIVISIONS OF THE COLLEGE, A REGISTRAR, BURSAR, ADMINISTRATIVE, TEACHING AND NON-TEACHING STAFF AS REQUIRED, THEIR SALARIES AND WAGE RATES ARE ESTABLISHED BY THE COUNCIL OF REGENTS AND MUST BE APPROVED BY THE MINISTER.

12. THE ABOVE ABBREVIATED DESCRIPTION OF THE AUTHORITY OF THE BOARD OF GOVERNORS OF THE RESPONDENT COLLEGE AND THE LIMITATIONS PLACED UPON THAT AUTHORITY IS ANALOGOUS TO THE POWERS POSSESSED BY THE COMMISSIONERS OF THE HALIFAX HARBOUR COMMISSIONERS AND THE NIAGARA PARKS COMMISSION AND IS EVEN MORE RESTRICTED, IN OUR VIEW, THAT THE AUTHORITY GIVEN TO THE CUSTODIAN OF ENEMY PROPERTY. IN SHORT, THE STATUTE ESTABLISHING THE BOARD OF GOVERNORS GIVES THEM LITTLE INDEPENDENT DISCRETION. ALL OF THEIR ACTIONS TO A VERY SUBSTANTIAL DEGREE ARE SUBJECT TO DIRECT OR INDIRECT CONTROL BY EITHER OR BOTH THE COUNCIL OF REGENTS AND THE MINISTER. WE ACCORDINGLY ARE OF THE OPINION THAT AT COMMON LAW THE RESPONDENT IS A SERVANT OR AGENT OF THE CROWN.

13. THE CROWN AGENCY ACT R.S.O. 1960 c. 81 DEFINES A CROWN AGENCY IN SECTION 1 AS FOLLOWS:

IN THIS ACT "CROWN AGENCY" MEANS A BOARD, COMMISSION, RAILWAY, PUBLIC UTILITY, UNIVERSITY, MANUFACTORY, COMPANY OR AGENCY OWNED, CONTROLLED OR OPERATED BY HER MAJESTY IN RIGHT OF ONTARIO, OR BY THE GOVERNMENT OF ONTARIO, OR UNDER THE AUTHORITY OF THE LEGISLATURE OR THE LIEUTENANT GOVERNOR IN COUNCIL.

THIS BOARD IN THE ONTARIO FOOD TERMINAL BOARD CASE (SUP. A) EXPRESSED THE VIEW THAT THE CROWN AGENCY ACT WAS ENACTED BY THE LEGISLATURE SOLELY TO CLARIFY THE POSITION OF A CROWN AGENCY AS A SERVANT OR AGENT OF THE CROWN AND WAS SIMPLY RESTATING WHAT CONSTITUTED AN AGENT OF THE CROWN UNDER THE COMMON LAW. ACCORDINGLY, THIS BOARD WAS OF THE OPINION THAT IT WAS NOT REALLY NECESSARY FOR IT TO CONSIDER THE ACT. SINCE IT HAD BEEN ARGUED IN THAT CASE, HOWEVER, THAT THE ONTARIO FOOD TERMINAL BOARD DID NOT FALL WITHIN THE DEFINITION OF A "CROWN AGENCY" AS DEFINED IN THE ACT THE BOARD DID GIVE CONSIDERATION TO THE MEANING OF THE WORDS "OWNED, CONTROLLED AND OPERATED" IN THE DEFINITION. WHILE NOT GIVING AN OVERALL INTERPRETATION TO THESE WORDS, THE BOARD CONCLUDED THAT THE ONTARIO FOOD TERMINAL BOARD WAS NOT A "CROWN AGENCY" AS DEFINED IN SECTION 1 OF THE CROWN AGENCY ACT. THE POSITION WHICH WE ADOPT IN THE INSTANT APPLICATION IS THE SAME AS THAT OF THE BOARD IN THE ONTARIO FOOD TERMINAL BOARD CASE, IN THAT WE ARE NOT REALLY CALLED UPON TO MAKE A FINDING AS TO THE POSITION OF THE RESPONDENT UNDER THE CROWN AGENCY ACT. HAVING REGARD, HOWEVER, TO THE HIGH DEGREE OF CONTROL EXERCISED BY THE MINISTER OVER THE RESPONDENT COLLEGE, THERE IS AMPLE EVIDENCE TO SUPPORT A FINDING THAT THE RESPONDENT IS A "CROWN AGENCY" WITHIN THE MEANING OF THE ACT.

14. IN CONCLUSION, WE FIND THAT BOTH AT COMMON LAW AND UNDER THE CROWN AGENCY ACT, THE RESPONDENT IS AN AGENT OF THE CROWN AND THAT THE ONTARIO LABOUR RELATIONS ACT HAS NO APPLICATION TO IT. THE BOARD THEREFORE IS WITHOUT JURISDICTION TO DEAL WITH THE INSTANT APPLICATION. WE WOULD ADD THAT IN LIGHT OF THE ABOVE FINDING, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE ALTERNATIVE ARGUMENT OF COUNSEL FOR THE COUNCIL OF REGENTS.

15. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

13644-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V.  
HI WAY MARKET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: CLIFFORD EVANS AND ALEX RYDER FOR THE APPLICANT,  
F. G. HAMILTON, JOHN MIHM AND HAROLD PFERRER FOR THE RESPONDENT, AND  
RICHARD J. HOBSON FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: DECEMBER 14, 1967.

1. FOLLOWING THE CONVENING OF A MEETING OF THE PARTIES BY THE EXAMINER APPOINTED IN THIS MATTER, THE APPLICANT SOUGHT LEAVE TO WITHDRAW THIS APPLICATION. THE RESPONDENT OBJECTS TO THE GRANTING OF SUCH LEAVE, AND URGES THE BOARD NOT ONLY TO DISMISS THE APPLICATION (WHICH WOULD BE THE BOARD'S USUAL PRACTICE IN SUCH CIRCUMSTANCES), BUT ALSO TO IMPOSE A SIX MONTHS' BAR TO A FURTHER APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO THIS UNIT OF EMPLOYEES. THE RESPONDENT ADVISED THE BOARD THAT A NEW APPLICATION FOR CERTIFICATION HAD BEEN MADE BY THE APPLICANT. THIS APPLICATION WOULD NOT, IN ACCORDANCE WITH THE BOARD'S PRACTICE, BE PROCESSED UNTIL THE MATTER NOW BEFORE THE BOARD IS DETERMINED.

2. THE BOARD HAS CONSIDERED THE RESPONDENT'S REQUEST. IT IS OUR VIEW THAT THE QUESTION OF THE PROPRIETY OR TIMELINESS OF ANY NEW APPLICATION WHICH MAY BE MADE BY THE APPLICANT IS A MATTER TO BE DEALT WITH IN THE NEW PROCEEDINGS. IN OUR VIEW, THE BOARD'S USUAL PRACTICE SHOULD BE FOLLOWED IN THE INSTANT CASE. HAVING REGARD TO THE STAGE OF THE PROCEEDINGS AT WHICH THE APPLICANT'S REQUEST WAS MADE, THE BOARD DISMISSES THIS APPLICATION.

13653-67-R: LOCAL 345, BROCKVILLE, ONTARIO OF THE INTERNATIONAL  
ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE  
OPERATORS OF THE UNITED STATES AND CANADA (APPLICANT) V. PALACE  
AMUSEMENT COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES  
(OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: A. L. PAT TRAVERS FOR THE APPLICANT, G. B. MARKELL FOR THE RESPONDENT, CLINTON MASSON FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE:

DECEMBER 7, 1967.

. . .

3. THE BOARD FURTHER FINDS THAT ALL MOTION PICTURE PROJECTIONISTS EMPLOYED BY THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THERE WAS FILED IN THIS MATTER TWO HANDWRITTEN DOCUMENTS EACH SIGNED BY AN EMPLOYEE OF THE RESPONDENT. MR MASSON APPEARED AND TESTIFIED IN SUPPORT OF THE PETITIONS. THE STATEMENT OF OPPOSITION SIGNED BY MR. MASSON READS AS FOLLOWS:

PLEASE BE ADVISED THAT I AM EMPLOYED BY THE PALACE AMUSEMENT Co. LTD., 29 SECOND STREET WEST, CORNWALL, ONTARIO, AS A PROJECTIONIST AT THE PALACE THEATRE.

I HAVE READ THE NOTICE FOR CERTIFICATION OF THE APPLICATION BY THE LOCAL #345, BROCKVILLE ONTARIO OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA AS BARGAINING AGENT FOR THE EMPLOYEES OF THE PALACE AMUSEMENT Co. LTD.

I DO NOT FEEL THAT IT WOULD BE OF ANY BENEFIT TO ME TO HAVE THE ABOVEMENTIONED LOCAL ACT AS BARGAINING AGENT FOR ME. FOR ONE THING, I DO NOT WISH TO LOOSE MY STANDING AS SENIOR OPERATOR. ALSO, I AM CLOSE TO RETIREMENT AND I FEEL I COULD DO MY OWN BARGAINING WITH THE COMPANY MUCH BETTER. THIRDLY, I BELIEVE THE COMPANY CAN OFFER ME BETTER WORKING CONDITIONS WITHOUT THE UNION BEING INVOLVED.

SOME TIME AGO, I SIGNED AN APPLICATION FOR ENTRY INTO THE UNION. AFTER LONG CONSIDERATION, I FEEL I SHOULD WITHDRAW SUCH APPLICATION AND I WILL DO SO IN WRITING AT MY FIRST OPPORTUNITY.



BECAUSE I CANNOT ATTEND THE HEARING MYSELF, I  
HEREBY APPOINT MY MANAGER-EMPLOYER, MR. G. B.  
MARKELL AS MY REPRESENTATIVE.

5. MR. MASSON TESTIFIED THAT AFTER HIS STATEMENT HAD BEEN WRITTEN BY HIS DAUGHTER, AT HIS DIRECTION, MR. MASSON LEFT TWO COPIES OF HIS STATEMENT ON MR. MARKELL'S DESK. MR. MARKELL SUBSEQUENTLY SIGNED A REPLY TO THE APPLICATION ON BEHALF OF THE RESPONDENT WHICH CONTAINED THE FOLLOWING STATEMENTS:

5. DETAILED DESCRIPTION OF THE UNIT CLAIMED BY THE RESPONDENT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, INCLUDING THE MUNICIPALITY OR OTHER GEOGRAPHIC AREA AFFECTED:

CANNOT ANSWER. TWO OF THE THREE  
PROJECTIONISTS INVOLVED DO NOT WISH  
APPLICANT TO REPRESENT THEM. SEE  
ATTACHED LETTERS.

10. OTHER RELEVANT STATEMENTS:

WE HAVE 3 MOTION PICTURE OPERATORS IN THE UNIT  
PROPOSED BY THE APPLICANT. TWO OF THESE, MR.  
C. J. MASSON AND MR. G. V. WHITHAM, DO NOT WISH  
TO BE REPRESENTED BY THE APPLICANT, AS ATTESTED  
BY THEIR SIGNED STATEMENTS ATTACHED. MY COMPANY  
THEREFORE OPPOSES THIS APPLICATION.

6. BOTH MR. MASSON AND MR. WHITHAM'S STATEMENTS OF DESIRE WERE FORWARDED TO THE BOARD BY MR. MARKELL TOGETHER WITH THE RESPONDENT'S REPLY. IT IS ALSO OF INTEREST TO NOTE THAT MR. WHITHAM FORWARDED AN ADDITIONAL COPY OF THE STATEMENT OF DESIRE TO THE BOARD WHICH WAS TYPED ON THE LETTERHEAD OF THE RESPONDENT. THE BODY OF THIS STATEMENT IS IDENTICAL TO THE CONTEXT OF THE HANDWRITTEN STATEMENT OF DESIRE FORWARDED BY THE RESPONDENT.

7. MR. MASSON TESTIFIED THAT HE HAD NO CONVERSATIONS WITH ANY MEMBER OF MANAGEMENT PRIOR TO THE PREPARATION OF THE STATEMENT OF DESIRE CONCERNING THE UNION OR HIS PETITION. MR. MARKELL SUPPORTED MR. MASSON'S TESTIMONY AND INFORMED THE BOARD THAT HE HAD ADVISED MR. MASSON THAT HE COULD NOT ACT AS HIS REPRESENTATIVE BECAUSE "IT WOULD NOT LOOK RIGHT AND BECAUSE HE WAS NOT FAMILIAR WITH THE LABOUR RELATIONS ACT OR THE LABOUR RELATIONS BOARD".

8. THE BOARD FINDS THAT THE OBJECTIVE FACTS OF THIS CASE MILITATE AGAINST THE CREDIBILITY OF MR. MASSON. IT IS IMPROBABLE THAT AN EMPLOYEE WOULD APPOINT HIS EMPLOYER AS HIS REPRESENTATIVE IN THE MANNER IN WHICH MR. MASSON DID AND WOULD LEAVE TWO COPIES OF THE PETITION ON THE MANAGER'S DESK, AS WAS DONE IN THIS CASE, WITHOUT ANY PRIOR CONVERSATION OR DISCUSSION WITH THE MANAGER. IN ADDITION, WHILE MR. MARKELL STATED THAT HE ADVISED MR. MASSON THAT HE COULD NOT REPRESENT HIM, HE DID IN FACT ACT AS HIS REPRESENTATIVE WHEN HE FORWARDED THE PETITION TO THE BOARD TOGETHER WITH THE RESPONDENT'S REPLY. HAD IT NOT BEEN FOR THE INTERVENTION OF MR. MARKELL THIS PETITION WOULD NOT HAVE BEEN BEFORE THE BOARD.

9. WHEN THE TESTIMONY OF MR. MASSON IS VIEWED IN THE LIGHT OF THE OBJECTIVE FACTS OF THIS CASE WE FIND THAT MR. MASSON WAS NOT A CREDIBLE WITNESS AND ACCORDINGLY WE DO NOT FIND THAT HIS PETITION REPRESENTS A VOLUNTARY EXPRESSION OF HIS TRUE WISHES.

10. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 26TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

DECEMBER 7, 1967.

1. I DISSENT.

2. CLINTON MASSON, A PROJECTIONIST IN THE EMPLOY OF THE RESPONDENT, TESTIFIED UNDER OATH THAT PRIOR TO THE ORIGINATION, PREPARATION AND SIGNING OF HIS LETTER TO THE BOARD IN OPPOSITION TO THIS APPLICATION HE HAD NOT DISCUSSED THE UNION OR THE LETTER WITH THE MANAGEMENT OF THE RESPONDENT NOR HAD MANAGEMENT DISCUSSED IT WITH HIM OR IN HIS PRESENCE. HE GAVE HIS EVIDENCE IN A STRAIGHT-FORWARD AND CANDID MANNER AND IT STANDS UNCONTRADICTED BY ANYONE NOR IS IT CHALLENGED BY THE APPLICANT UNION.

3. IN THESE CIRCUMSTANCES, I AM OBLIGED TO ACCEPT THE EVIDENCE OF MASSON AND FIND THAT HIS LETTER TO THE BOARD CONSTITUTES A VOLUNTARY SIGNIFICATION ON HIS PART THAT HE DOES NOT WISH THE APPLICANT UNION TO REPRESENT HIM.

4. WITHOUT MASSON'S MEMBERSHIP, THE UNION WOULD NOT HAVE MORE THAN 55% OF THE EMPLOYEES OF THE RESPONDENT AS MEMBERS IN THE BAR-GAINING UNIT DETERMINED BY THE BOARD AND I WOULD SEEK CONFIRMATION OF THE MEMBERSHIP CLAIMED BY THE APPLICANT BY DIRECTING THAT A REPRESENTATIVE VOTE BE TAKEN.

13672-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,  
LOCAL UNION 1669 (APPLICANT) V. DAREN CONSTRUCTION COMPANY LIMITED  
(RESPONDENT)

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. REID FOR THE APPLICANT, AND M. DARLASTON FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 11, 1967.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT RETURNED THE CERTIFICATION FORMS AND OTHER DOCUMENTS SERVED ON IT ON THE GROUND THAT IT HAD NEVER EMPLOYED CARPENTERS UNDER THE JURISDICTION OF THE APPLICANT. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE EMPLOYMENT STATUS OF THE PERSONS AFFECTED BY THE APPLICATION AND, FOLLOWING THE ISSUANCE OF THE EXAMINER'S REPORT, LISTED THE MATTER FOR HEARING FOR THE PURPOSE OF ENABLING THE PARTIES TO ADDUCE SUCH FURTHER EVIDENCE AND TO MAKE SUCH FURTHER REPRESENTATIONS TO THE BOARD AS THEY SAW FIT. AT THE HEARING NO FURTHER EVIDENCE WAS TENDERED.

2. THE APPLICANT ALLEGES THAT THE PERSONS IN QUESTION ARE EMPLOYEES OF THE RESPONDENT. THIS IS A BASIC ALLEGATION IN EVERY CERTIFICATION CASE AND, WHERE IT IS CONTESTED, THE PRIMARY ONUS IS ON THE APPLICANT TO PROVE ITS CASE. WE HAVE CAREFULLY CONSIDERED THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES BEFORE US ON THIS MATTER. WHILE IT IS ADMITTED THAT THE RESPONDENT IS THE PRIME CONTRACTOR ON THE JOB, THE EVIDENCE FALLS SHORT OF SATISFYING US THAT HE IS THE EMPLOYER OF THE PERSONS IN QUESTION. THE REFERRAL SLIPS ATTACHED TO THE EXAMINER'S REPORT, AS WELL AS EXHIBIT 5 TO THE REPORT, ARE NOT EVIDENCE THAT DAREN CONSTRUCTION COMPANY LIMITED IS THE EMPLOYER. THE MEN WERE NOT PAID BY DAREN CONSTRUCTION BUT BY ONE, J. TOOMEY, WHO WAS IN CHARGE OF THE JOB. NEITHER OF THE TWO PERSONS IN QUESTION SAW ANY EQUIPMENT OR ANYTHING ON THE JOB SITE WHICH WAS MARKED WITH THE RESPONDENT'S NAME. THE RESPONDENT TENDERED A FORM OF SUB-CONTRACT BETWEEN ITSELF AND WAYNCO CONSTRUCTION UNDER WHICH THE SUB-CONTRACTOR UNDERTOOK "TO SUPPLY LABOUR AND EQUIPMENT TO INSTALL ALL CONCRETE MASONRY WORK". J. TOOMEY SIGNED ON BEHALF OF WAYNCO CONSTRUCTION. WHATEVER THE DEFECTS OF THIS PARTICULAR SUB-CONTRACT, IT WOULD APPEAR TO SUPPORT THE CONTENTION OF

THE RESPONDENT. THE APPLICANT FILED A LETTER, WHICH IT RECEIVED FROM J. TOOMEY, MAKING CERTAIN ALLEGATIONS AND CLAIMS. THE BOARD HAS NOT CONSIDERED THIS LETTER SINCE MR. TOOMEY WAS NOT CALLED AS A WITNESS. HAD THE CONTENTS OF THIS PARTICULAR LETTER BEEN PROVED TO THE SATISFACTION OF THE BOARD, A DIFFERENT SITUATION MIGHT HAVE ARISEN.

3. HAVING REGARD, THEN, TO THE ABOVE CONSIDERATIONS, THE BOARD IS UNABLE TO FIND ON THE EVIDENCE BEFORE IT THAT THE PERSONS FOR WHOM THE APPLICANT IS SEEKING TO BECOME THE BARGAINING AGENT WERE EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION.

4. THE APPLICATION IS DISMISSED.

13675-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. AMPLIFONE CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT HEARING: LORNE INGLE, LORNE HOGAN AND LLOYD FELL FOR THE APPLICANT, GEORGE T. WALSH, Q.C., FOR THE RESPONDENT, AND F. R. VON VEH AND MRS. L. FIEGUTH FOR A GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:  
DECEMBER 4, 1967.

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4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. SCHEDULE "C" OF THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT CONTAINS THE NAMES OF 151 EMPLOYEES. THE SCHEDULE DIRECTS THE LISTING THEREON OF ALL EMPLOYEES WHO WERE NOT ACTUALLY AT WORK ON THE (IN THIS CASE) 22ND DAY OF SEPTEMBER, 1967, BY REASON OF LAY-OFF IN THE BARGAINING UNIT DESCRIBED IN THE APPLICATION OF THE APPLICANT AS AT THE 22ND DAY OF SEPTEMBER, 1967. THE LISTS WERE MAILED TO THE BOARD BY REGISTERED MAIL ON OCTOBER 5TH, 1967.

6. OF THE 151 EMPLOYEES SHOWN ON SCHEDULE "C", SIX WERE LAID OFF PRIOR TO SEPTEMBER 21ST, 1967. (THE SIGNIFICANCE OF THAT DATE WILL APPEAR LATER.) THE EXPECTED DATE OF RECALL OF THESE SIX PERSONS IS UNCERTAIN, AND THE BOARD, FOLLOWING ITS USUAL PRACTICE, FINDS THAT THEY ARE NOT EMPLOYEES FOR THE PURPOSE OF THE COUNT.

7. INsofar AS THE REMAINING 145 PERSONS ARE CONCERNED, SCHEDULE "C" INDICATES THAT THEIR "LAST WORKDAY" WAS SEPTEMBER 21ST, 1967. THE FINAL COLUMN IN THE SCHEDULE, WHICH IS HEADED "EXPECTED DATE OF RECALL", SHOWS THAT 62 OF THE 145 EMPLOYEES HAD BEEN RECALLED TO



WORK AT OR PRIOR TO THE FILING OF THE SCHEDULE BY THE RESPONDENT.

8. IT WAS COMMON GROUND THAT ALL EMPLOYEES WHOSE "LAST DAY WORKED" WAS SEPTEMBER 21ST HAD PRESENTED THEMSELVES AT THE PLANT FOR WORK ON THE MORNING OF SEPTEMBER 22ND AND HAD BEEN INFORMED THEN, FOR THE FIRST TIME, THAT THEY WERE LAID OFF WORK. SEPTEMBER 22ND, AS PREVIOUSLY NOTED, WAS THE DATE UPON WHICH THE APPLICATION WAS MADE. THIS SITUATION APPEARS TO BE ONE OF FIRST INSTANCE IN- SOFAR AS THE BOARD IS CONCERNED, AND THE DETERMINATION OF THE STATUS TO BE AWARDED EMPLOYEES, FOR THE PURPOSE OF THE COUNT, IN SUCH CIRCUMSTANCES MUST, CONSEQUENTLY, BREAK NEW GROUND TO SOME EXTENT.

9. AT THIS STAGE IT MIGHT BE HELPFUL TO REVIEW THE PROVISIONS OF SECTION 7(1) OF THE LABOUR RELATIONS ACT.

10. IN THE CASE OF AN APPLICATION FOR CERTIFICATION, THE BOARD IS REQUIRED, UNDER THAT SECTION, TO ASCERTAIN TWO MATTERS. THE FIRST OF THESE IS THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE. THE SECOND IS THE NUMBER OF EMPLOYEES IN THE UNIT WHO WERE MEMBERS OF THE TRADE UNION AT SUCH TIME "AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 77".

11. THE TIME AS OF WHICH THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT IS TO BE ASCERTAINED IS DETERMINED BY THE WORDING OF THE SUBSECTION. ON THE OTHER HAND, THE TIME AS OF WHICH THE NUMBER OF EMPLOYEES WHO ARE MEMBERS OF THE TRADE UNION IS TO BE ASCERTAINED IS NOT FIXED BY THE STATUTE BUT FALLS TO BE DETERMINED BY THE BOARD UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 77. IN REGINA V. ONTARIO LABOUR RELATIONS BOARD, EX PARTE HANNIGAN ET AL, [1967] 2 ONTARIO REPORTS 469, THE COURT, IN CONSIDERING THE INTERPRETATION AND INTENT OF SECTION 7(1), REFERS TO THE FIRST TIME TO BE ASCERTAINED AS THE "UNIT TIME" AND TO THE SECOND AS THE "MEMBER TIME". THE COURT THEN GOES ON TO SAY THAT THE "FIXING OF THE UNIT TIME HAS BEEN DONE IMMOVABLY BY THE STATUTE ITSELF AND IS NOT SUBJECT TO VARIATION PURSUANT TO THE RULES; IT REQUIRES NO BOARD ACTION. THE MEMBER TIME, HOWEVER, IS REQUIRED TO BE DETERMINED AND IS THEREFORE A TIME NOT FIXED THOUGH DETERMINABLE."

12. WITH RESPECT TO THE UNIT TIME IN THE PRESENT APPLICATION, REGARD MUST BE HAD FOR THE PROVISIONS OF SECTION 85(2) OF THE LABOUR RELATIONS ACT, WHICH IS AS FOLLOWS:

"AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION THAT A TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN A BARGAINING UNIT, IF SENT BY REGISTERED MAIL ADDRESSED TO THE BOARD AT TORONTO, SHALL BE DEEMED TO HAVE BEEN MADE ON THE DATE ON WHICH IT WAS SO MAILED."

13. THE APPLICATION HEREIN WAS MAILED TO THE BOARD BY REGISTERED

MAIL ON SEPTEMBER 22ND, 1967, SO THAT THAT DATE, AS INDICATED EARLIER, REPRESENTS THE TIME THE APPLICATION WAS MADE, OR THE UNIT TIME.

14. ALTHOUGH THE UNIT TIME IS DETERMINED BY THE PROVISIONS OF SECTION 7(1), NOTHING IS SAID IN THAT SECTION OR ELSEWHERE IN THE ACT CONCERNING THE METHOD OR CRITERIA TO BE USED BY THE BOARD IN ASCERTAINING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE MATERIAL TIME. THE DETERMINATION AS TO WHETHER A PERSON IS OR IS NOT TO BE NUMBERED AS AN EMPLOYEE ON THE DATE OF APPLICATION IS, THEREFORE, LEFT ENTIRELY TO THE DISCRETION OF THE BOARD. TO ENSURE CONSISTENCY AND ORDER IN ITS PROCEEDINGS AND WITH A VIEW TO THE PURELY PRACTICAL DIFFICULTIES INVOLVED, THE BOARD HAS ADOPTED CERTAIN PRACTICES AND RULES OF THUMB APPLICABLE TO THE VARIOUS SITUATIONS WHICH COMMONLY ARISE IN THE EMPLOYER-EMPLOYEE RELATIONSHIP.

15. AS AN ASSISTANCE TO THE BOARD IN ARRIVING AT A DECISION WITH RESPECT TO THE NUMBER OF PERSONS IN THE BARGAINING UNIT, THE EMPLOYER IS ASKED TO FILE WITH THE BOARD SCHEDULES LISTING ITS EMPLOYEES. THE SCHEDULES FORM PART OF THE REPLY REQUIRED UNDER SECTION 7 OF THE BOARD'S RULES OF PROCEDURE. THE HEADINGS OF THE SCHEDULES ARE SET OUT BELOW:

SCHEDULE "A"

LIST (ALPHABETICALLY ARRANGED) OF ALL EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE APPLICATION OF THE APPLICANT AS AT THE                      DAY OF                      , 19   . (DO NOT INCLUDE THE NAMES OF EMPLOYEES THAT APPEAR IN B, C OR D.)

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NAME	OCCUPATIONAL CLASSIFICATION
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SCHEDULE "B"

LIST (ALPHABETICALLY ARRANGED) OF ALL EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK IN THE BARGAINING UNIT DESCRIBED IN THE APPLICATION OF THE APPLICANT AS AT THE                      DAY OF                      , 19   .

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NAME	OCCUPATIONAL CLASSIFICATION
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(NO FURTHER REFERENCE NEED BE HAD TO THIS SCHEDULE, AS IT DOES NOT ENTER INTO THE QUESTIONS RAISED IN THIS APPLICATION.)

SCHEDULE "C"

LIST (ALPHABETICALLY ARRANGED) OF ALL EMPLOYEES WHO WERE NOT ACTUALLY AT WORK ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_, BY REASON OF LAY-OFF, IN THE BARGAINING UNIT DESCRIBED IN THE APPLICATION OF THE APPLICANT AS AT THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_.

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NAME	OCCUPATIONAL CLASSIFICATION	DATE OF LAY-OFF	EXPECTED DATE OF RECALL
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SCHEDULE "D"

LIST (ALPHABETICALLY ARRANGED) OF ALL EMPLOYEES NOT PREVIOUSLY SHOWN WHO WERE NOT AT WORK ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_, IN THE BARGAINING UNIT DESCRIBED IN THE APPLICATION OF THE APPLICANT AS AT THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_.

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NAME	OCCUPATIONAL CLASSIFICATION	LAST DAY WORKED	REASON FOR ABSENCE	EXPECTED DATE OF RETURN
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16. IT IS CONVENIENT TO DEAL WITH THE SCHEDULES NOW IN REVERSE ORDER. THE RULE OF THUMB APPLICABLE TO SCHEDULE "D" IS THAT THE BOARD, AT THE HEARING, DETERMINES IF THE PERSONS NAMED THEREON HAVE WORKED WITHIN THE MONTH IMMEDIATELY PRECEDING THE DATE OF APPLICATION AND HAVE EITHER RETURNED TO WORK WITHIN THE MONTH IMMEDIATELY FOLLOWING THE DATE OF APPLICATION OR ARE EXPECTED TO SO DO. IF THESE CONDITIONS PREVAIL THE EMPLOYEE CONCERNED IS CONSIDERED BY THE BOARD TO BE AN EMPLOYEE FOR THE PURPOSE OF THE UNIT COUNT. IF ALL ARE NOT FULFILLED HE IS NOT NUMBERED IN THE UNIT COUNT.

17. WHERE AN EMPLOYEE IS LISTED ON SCHEDULE "C", HE IS FOUND TO BE AN EMPLOYEE FOR THE PURPOSE OF THE UNIT COUNT IF HE WORKED AT ANY TIME DURING THE MONTH IMMEDIATELY PRECEDING THE DATE OF APPLICATION AND IS TO BE RECALLED OR HAS BEEN RECALLED WITHIN THE MONTH IMMEDIATELY FOLLOWING THE DATE OF THE APPLICATION. AGAIN, UNLESS BOTH CONDITIONS ARE MET, SUCH A PERSON IS NOT COUNTED IN THE UNIT (BERTRAND & FRERE CONSTRUCTION Co. LIMITED CASE, FILE No. 10347-65-R). IT SHOULD BE NOTED THAT THE RULE OF THUMB HERE EXPRESSED HAS TO DO WITH EMPLOYEES WHO WERE NOT AT WORK ON THE DATE OF THE APPLICATION. AS TO THE POLICY OF THE BOARD WITH RESPECT TO AN EMPLOYEE WHO WAS PRESENT ON THE DATE OF THE MAKING OF THE APPLICATION, BUT WHO WAS LAID OFF INTERMITTENTLY THEREAFTER, SEE THE PEJOY PACKING COMPANY LIMITED CASE, BOARD FILE No. 6454-63-R.

18. WITH RESPECT TO PERSONS LISTED ON SCHEDULE "A", THE BOARD, AT THE HEARING, WILL INQUIRE, GENERALLY ONLY IF MEMBERSHIP EVIDENCE IS FILED AFTER THE FILING OF THE APPLICATION, AS TO WHETHER THERE HAVE BEEN ANY "SEPARATIONS" BETWEEN THE DATE OF THE APPLICATION AND THE TERMINAL DATE. THERE IS NO DOUBT THAT IF ANY EMPLOYEE HAS QUIT OR BEEN DISCHARGED BETWEEN THE TWO ABOVE MENTIONED DATES AND HIS MEMBERSHIP CARD, IF ANY, IS DATED SUBSEQUENT TO THE DATE OF DISCHARGE OR QUIT THAT, ALTHOUGH HE MUST REMAIN ON THE LIST FOR THE PURPOSE OF THE UNIT COUNT, HIS CARD WILL NOT BE COUNTED IN DETERMINING THE MEMBERSHIP PERCENTAGE OF THE UNION. IN OTHER WORDS HE IS CONSIDERED AN EMPLOYEE FOR ONE PURPOSE BUT NOT FOR THE OTHER.

19. IT WAS SUBMITTED AT THE HEARING OF THIS MATTER THAT THE WORDS "NOT ACTUALLY AT WORK" USED IN SCHEDULE "C" UPON WHICH APPEAR THE NAMES OF THOSE PERSONS WITH WHOSE STATUS WE ARE HERE CONCERNED, MUST BE INTERPRETED AS MEANING "ACTUALLY PERFORMED WORK". WE CANNOT ACCEPT THAT VIEW.

20. IT IS OUR OPINION THAT THE PERSONS WHO, NOT HAVING BEEN FOREWARNED BY THE RESPONDENT, PRESENTED THEMSELVES AT THEIR PLACE OF WORK IN THE REASONABLE EXPECTATION OF CARRYING ON THEIR NORMAL EMPLOYMENT MUST BE FOUND TO BE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE THEY SO REPORTED AND SHOULD HAVE BEEN SHOWN ON SCHEDULE "A" AND NOT ON SCHEDULE "C", NOTWITHSTANDING THE FACT THAT THEY WERE LAID OFF INDEFINITELY WITHOUT PERFORMING ANY WORK ON THAT SAME DATE.

21. HAVING DECIDED THAT ALL THE NAMES ON SCHEDULE "C", OTHER THAN THE SIX PREVIOUSLY DISPOSED OF, SHOULD APPEAR ON SCHEDULE "A", NO QUESTION REMAINS AS TO WHETHER THEY ARE TO BE CONSIDERED EMPLOYEES FOR THE PURPOSE OF THE COUNT. CERTAINLY THERE CAN BE NO DOUBT THAT THE 62 EMPLOYEES WHO WERE RECALLED PRIOR TO THE FILING OF THE REPLY BY THE RESPONDENT MUST BE DEEMED TO BE EMPLOYEES FOR THE PURPOSE OF THE UNIT COUNT IN ANY EVENT, THAT IS WHETHER THEY REMAIN ON SCHEDULE "C" OR ARE TRANSFERRED TO SCHEDULE "A". FURTHERMORE, IF THE EMPLOYEES WHO ARE STILL ON LAY-OFF HAD BEEN LISTED, AS WE HAVE HELD THEY SHOULD HAVE BEEN, ON SCHEDULE "A", THE ONLY QUESTION THAT MIGHT HAVE ARISEN AT THE HEARING CONCERNING THEM WOULD HAVE BEEN AS TO WHETHER THERE HAD BEEN ANY "SEPARATIONS". THE ANSWER TO THAT QUESTION, HOWEVER, RELATES TO THE MATTER OF THE ACCEPTABILITY OF ANY EVIDENCE OF MEMBERSHIP FILED ON THEIR BEHALF AND NOT TO THAT OF THEIR BEING COUNTED AS BEING IN THE BARGAINING UNIT ON THE DATE IN QUESTION.

22. THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WAS, BY SCHEDULES FILED, AS FOLLOWS: SCHEDULE "A", 10; SCHEDULE "B", NONE; SCHEDULE "C", 145; SCHEDULE "D", 5. THE TOTAL AMOUNTS TO 160 EMPLOYEES.

23. HAVING AT THIS POINT ASCERTAINED THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WE MUST NOW TURN TO THE QUESTION OF MEMBERSHIP IN THE TRADE UNION "AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 77". IN ACCORDANCE WITH ITS PRACTICE, THE BOARD DETERMINES THE TERMINAL DATE OF THIS APPLICATION, NAMELY OCTOBER 2ND, 1967, AS THE TIME AS OF WHICH IT ASCERTAINED THE NUMBER OF EMPLOYEES WHO ARE MEMBERS OF THE TRADE UNION.



24. AT THIS POINT WE SHOULD SAY THAT A NUMBER OF THE MEMBERSHIP CARDS FILED WERE DATED THE 22ND OF SEPTEMBER, 1967, THE DATE, IT WILL BE RECALLED, OF BOTH THE APPLICATION AND THE LAY-OFF. IT APPEARS TO US THAT SEPTEMBER 22ND CANNOT BE FRAGMENTED SO AS TO ATTACH PRIORITIES IN TIME TO THE VARIOUS EVENTS OCCURRING ON THAT DATE AND THAT MEMBERSHIP CARDS SIGNED ON THAT DATE MUST UNQUESTIONABLY BE ACCEPTED AS, PRIMA FACIE, VALID. THERE IS A FURTHER QUESTION WITH RESPECT TO MEMBERSHIP CARDS SIGNED AFTER SEPTEMBER 22ND BUT BEFORE THE TERMINAL DATE.

25. INsofar AS THE LATTER CARDS ARE CONCERNED, WE ARE OF THE OPINION THAT THE BOARD, IN INQUIRING AS TO WHETHER THERE HAVE BEEN "SEPARATIONS" OF PERSONS WHO WERE PRESENT ON THE DATE OF MAKING OF THE APPLICATION, IS INFLUENCED BY THE CONSIDERATION THAT AN EMPLOYEE WHO HAS COMPLETELY SEVERED HIS RELATIONSHIP WITH THE EMPLOYER, THAT IS, HAS BEEN DISCHARGED FOR CAUSE OR HAS QUIT, IS SO UNLIKELY TO HAVE A CONTINUING INTEREST IN THE AFFAIRS OF THE COMPANY OR HIS FELLOW EMPLOYEES THAT A MEMBERSHIP CARD SIGNED BY HIM, AFTER SUCH SEVERANCE, CANNOT BE GIVEN WEIGHT WHEN ASSESSING THE TRUE WISHES OF EMPLOYEES IN THE UNIT.

26. IN OUR OPINION, THESE CONSIDERATIONS DO NOT APPLY TO THE CIRCUMSTANCES OF THE PRESENT CASE. IT IS OUR OPINION, AND WE SO FIND, THAT THE MEMBERSHIP CARDS OF THE LAID-OFF EMPLOYEES WHO HAVE BEEN FOUND TO BE IN THE BARGAINING UNIT ON THE DATE THE APPLICATION WAS MADE AND WHICH WERE SIGNED BETWEEN THAT DATE AND THE TERMINAL DATE, ARE VALID AND ACCEPTABLE AS EVIDENCE OF UNION MEMBERSHIP OF THESE EMPLOYEES AT THE MEMBER TIME.

27. FOR THE PURPOSES OF THE COUNT, WE FIND THAT, AS OF THE TIMES SUBSEQUENTLY REFERRED TO, THERE WERE 160 EMPLOYEES IN THE BARGAINING UNIT AND THAT THE APPLICANT FILED 119 COMBINATION APPLICATIONS AND RECEIPTS, OF WHICH 112 STAND UP. ON THE BASIS OF THE NUMBER OF EMPLOYEES FOUND TO BE IN THE BARGAINING UNIT, THE APPLICANT REQUIRES 89 CARDS FOR OUTRIGHT CERTIFICATION. IT HAS A SURPLUS ABOVE THAT FIGURE OF 23 CARDS.

28. THERE WAS FILED IN OPPOSITION TO THE APPLICATION A STATEMENT OF OBJECTIONS OR PETITION SIGNED BY 39 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. TWENTY-THREE OF THE PERSONS SIGNING THE PETITION HAD ALSO SIGNED MEMBERSHIP CARDS IN THE UNION. ASSUMING THE BOARD FOUND THE PETITION CAST DOUBT UPON THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT ON BEHALF OF THE 23 PETITIONERS, THE APPLICANT WOULD STILL HAVE UNCONTES-TESTED EVIDENCE OF MEMBERSHIP FOR 89 EMPLOYEES, SUFFICIENT, AS INDICATED ABOVE, FOR OUTRIGHT CERTIFICATION. THAT BEING THE CASE, IT BECOMES UNNECESSARY TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE PREPARATION AND SIGNING OF THE PETITION.

29. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 2ND, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

30. WE FEEL IT SHOULD BE RECORDED THAT THE OUTCOME HEREIN WOULD HAVE BEEN THE SAME HAD THE BOARD ACCEPTED THE RESPONDENT'S ARGUMENT WITH RESPECT TO THE EMPLOYEES LISTED ON SCHEDULE "C" OF THE RETURNS. IN THAT CASE THE UNIT NUMBER WOULD HAVE BEEN 77, AND THE MEMBERSHIP COUNT WOULD HAVE STOOD AT 62. THE APPLICANT WOULD HAVE REQUIRED 43 MEMBERS FOR OUTRIGHT CERTIFICATION SO THAT IT WOULD HAVE HAD 19 CARDS TO THE GOOD. THE NUMBER OF EFFECTIVE PETITIONERS WOULD HAVE BEEN REDUCED TO 30, WITH AN OVERLAP OF 18. ASSUMING PROOF OF THE VALIDITY OF THE PETITIONS, THE APPLICANT WOULD HAVE BEEN LEFT WITH UNCHALLENGED EVIDENCE OF MEMBERSHIP FOR 44 WHICH WOULD OF COURSE HAVE BEEN SUFFICIENT FOR OUTRIGHT CERTIFICATION, THE PETITIONS NOTWITHSTANDING.

31. WE SHOULD ALSO ADD THAT WE HAVE HAD AN OPPORTUNITY TO READ THE DISSENTING DECISION IN THIS MATTER, WHEREIN IT IS STATED THAT THE AWARD EMBODIES THREE FUNDAMENTAL CHANGES IN BOARD POLICY. THE NATURE OF THE STATEMENT IS SUCH AS TO DEMAND COMMENT FROM THE BOARD.

32. WITH RESPECT TO THE FIRST OF THE THREE "FUNDAMENTAL CHANGES" ALLEGED TO HAVE BEEN BROUGHT ABOUT IN THIS DECISION, IT WAS THE CONSENSUS OF COUNSEL FOR BOTH PARTIES AND THAT OF THE BOARD THAT THIS WAS THE FIRST INSTANCE IN WHICH THE BOARD HAD BEEN CALLED UPON TO DEAL WITH A FACTUAL SITUATION SUCH AS PRESENTS ITSELF IN THIS CASE. THERE IS NO PREVIOUS DECISION, PRACTICE, OR POLICY OF THE BOARD DEALING WITH SIMILAR FACTS. IT IS FOR THAT REASON THE MAJORITY STATED IN THE AWARD THAT NEW GROUND WOULD BE BROKEN TO SOME EXTENT. THE MAJORITY'S DECISION IS THEREFORE NOT A CHANGE OF SO-CALLED POLICY, BUT A FINDING THAT THE PHRASE "ACTUALLY AT WORK" EXTENDS TO AND COVERS EMPLOYEES IN THE SITUATION WITH WHICH WE ARE HERE CONFRONTED FOR THE FIRST TIME.

33. THE SECOND "FUNDAMENTAL CHANGE" APPEARS TO ARISE OUT OF WHAT THE MAJORITY BELIEVE TO BE A FAILURE TO DISTINGUISH BETWEEN THE SITUATION OBTAINING IN THE CASE OF THE PREPARATION OF A LIST OF ELIGIBLE VOTERS AND THAT EXISTING IN THE MATTER OF THE DETERMINATION OF UNION MEMBERSHIP STATUS. OBVIOUSLY, WE ARE NOT DEALING HERE WITH THE MATTER OF A VOTERS' LIST.

34. THE EMPLOYEE WHO IS LAID OFF INDEFINITELY IS, INSOFAR AS THE LIST OF ELIGIBLE VOTERS IS CONCERNED, A NON-ENTITY FOR ALL PURPOSES. HE IS A FACTOR NEITHER IN THE WHOLE NOR IN THE CALCULATION OF THE PERCENTAGE THEREOF, REFERRED TO IN SECTION 7(3) OF THE ACT. THIS IS NOT THE CASE WITH THE DISCHARGED EMPLOYEE, OR THE ONE WHO HAS QUIT, IN THE SITUATION WHERE MEMBERSHIP PERCENTAGES ARE BEING CALCULATED. IN THAT CASE THE MEMBER EMPLOYEE REMAINS ON THE UNIT LIST BUT CEASES, AS ALREADY INDICATED IN PARAGRAPH 18 OF THE MAJORITY AWARD, TO COUNT AS A MEMBER IN CALCULATING THE PERCENTAGES OF MEMBERSHIP. IN EFFECT, IN PARTISAN LANGUAGE, SUCH DISCHARGED OR QUIT EMPLOYEE COUNTS "AGAINST" THE UNION IN HIS ABSENCE, WHILE HIS CARD CANNOT BE USED "FOR" THE UNION.

35. FOR THESE AND OTHER REASONS PREVIOUSLY SET OUT, THE BOARD DECLINES TO EXTEND THE APPLICATION OF ITS PRACTICE WITH RESPECT TO

SEPARATIONS TO INCLUDE EMPLOYEES LAID OFF BETWEEN THE DATE OF APPLICATION AND THE TERMINAL DATE. THIS DOES NOT, IN OUR OPINION, CONSTITUTE A FUNDAMENTAL CHANGE IN POLICY.

36. THE THIRD ALLEGED FUNDAMENTAL CHANGE IS VALID ONLY IF ACCEPTANCE IS ACCORDED TO WHAT THE DISSENT CONSIDERS TO BE THE MEANING TO BE ATTACHED TO THE WORD "SEPARATION".

37. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

DECEMBER 4, 1967.

I. I DISSENT.

2. THE MAJORITY DECISION MAKES THREE FUNDAMENTAL CHANGES IN BOARD POLICY:

(A) INTERPRETATION - "NOT ACTUALLY AT WORK"

IT HAS ALWAYS BEEN MY UNDERSTANDING THAT THE BOARD'S TEST IN INTERPRETING THE WORDS "NOT ACTUALLY AT WORK" AS USED IN THE PREAMBLE OF SCHEDULE "C" HAS BEEN TO ASCERTAIN IF THE EMPLOYEE ACTUALLY PERFORMED WORK FOR HIS EMPLOYER ON THE DATE OF APPLICATION. IF NO WORK WAS PERFORMED, THEN THE EMPLOYEE WAS CONSIDERED "NOT ACTUALLY AT WORK" ON THE DAY IN QUESTION.

IN PARAGRAPH 19 OF THE MAJORITY DECISION, THE BOARD NOW REJECTS THIS VIEW.

(B) INTERPRETATION - "SEPARATION FROM EMPLOYMENT"

DO THE WORDS "SEPARATION FROM EMPLOYMENT" MEAN AND INCLUDE PERSONS ON "INDEFINITE LAY-OFF"?

THIS MATTER WAS ABLY ARGUED BY LEARNED COUNSEL IN THE RIX ATHABASKA URENIUM MINES CASE, MONTHLY REPORT, JULY, 1961, AT PAGE 127. THE BOARD ENDORSED THE RECORD AS FOLLOWS:

IN ORDERING THE TAKING OF A REPRESENTATION VOTE IN THIS CASE THE BOARD GAVE ITS USUAL DIRECTION THAT ALL EMPLOYEES OF THE RESPONDENT ON FEBRUARY 28TH, 1961 "WHO DID NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF (FEBRUARY 28TH, 1961) AND THE TIME THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE". ONE, T. FINNERTY, ALONG WITH A NUMBER OF OTHER EMPLOYEES IN THE BARGAINING UNIT, WAS PLACED ON AN INDEFINITE LAY-OFF FROM THE EMPLOY OF THE RESPONDENT ON MARCH 10TH.

FINNERTY, WHO WAS STILL ON INDEFINITE LAY-OFF WHEN THE VOTE WAS TAKEN ON APRIL 20TH, 1961, WAS PERMITTED TO VOTE AND

HIS BALLOT WAS SEGREGATED AND THE BALLOT BOX SEALED PENDING A DECISION OF THE BOARD AS TO HIS ELIGIBILITY AS A VOTER. AT THE TIME OF THE HEARING HELD FOR THE PURPOSE OF DETERMINING HIS ELIGIBILITY, FINNERTY HAD STILL NOT BEEN RECALLED TO THE EMPLOY OF THE RESPONDENT AND THE EVIDENCE INDICATED THAT THE RESPONDENT HAD NO INTENTION OF RECALLING HIM. IT WAS NOT DISPUTED THAT THIS LAY-OFF WAS THE RESULT OF A REDUCTION IN THE RESPONDENT'S OPERATIONS AND THERE WAS NO EVIDENCE TO SUGGEST ANY IMPROPRIETY ON THE PART OF THE RESPONDENT IN LAYING OFF, AND NOT RECALLING Mr. FINNERTY TO ITS EMPLOY.

HAVING REGARD TO THESE CIRCUMSTANCES AND THE LONG-STANDING AND WELL-KNOWN POLICY OF THE BOARD IN CASES OF THIS NATURE, THE BOARD FINDS THAT AT THE TIME OF THE VOTE FINNERTY WAS NOT AN ELIGIBLE VOTER.

WHILE, AS ARGUED BY THE APPLICANT, THE WORDS "DISCHARGED FOR CAUSE" CONVEY THE MEANING AT COMMON LAW THAT THE PERSON IS DISCHARGED BECAUSE OF SOME MISCONDUCT ON HIS PART, THE CONSISTENT PRACTICE OF THE BOARD SINCE IT HAS ADOPTED THESE WORDS IN ITS ENDORSEMENT CLEARLY MANIFESTS THAT THE BOARD INTENDED A MORE EXTENDED MEANING THAN IS ASCRIBED TO THEM BY THE PARLANCE OF THE COMMON LAW. FOR OBVIOUS REASONS THE BOARD IN ITS ENDORSEMENT HAS CAREFULLY AVOIDED A RIGID AND ALL-EMBRACING DESCRIPTION OF THE CRITERIA OF ELIGIBILITY.

THE LAST TWO PARAGRAPHS OF THIS DECISION WERE QUOTED AGAIN IN THE E. H. FERREE COMPANY LIMITED CASE, MONTHLY REPORT, FEBRUARY, 1967, AT PAGE 867. HAVING DECIDED THAT SEPARATION FROM EMPLOYMENT INCLUDES INDEFINITE "LAY-OFF", I SUGGEST THAT THE BOARD'S INTERPRETATION MUST BE APPLIED CONSISTANTLY AND WITH UNIFORMITY REGARDLESS AS TO WHETHER IT IS IN THE CASE OF A VOTE OR FOR THE PURPOSES OF THE COUNT IN RESPECT OF MEMBERSHIP. IN EACH CASE, THE BOARD IS CONCERNED IF THE EMPLOYEE HAS A CONTINUING INTEREST IN WAGES AND WORKING CONDITIONS EXISTING IN THE ESTABLISHMENT OF THE EMPLOYER CONCERNED.

(c) APPLICATION FOR MEMBERSHIP SIGNED AFTER SEPARATION FROM EMPLOYMENT

IT IS MY UNDERSTANDING THAT THE BOARD HAS NEVER GIVEN WEIGHT TO MEMBERSHIP CARDS IN CASES WHERE THE PERSON WHO SIGNED THE CARD DID SO AFTER SEPARATION FROM EMPLOYMENT WHICH, AMONG OTHER THINGS, INCLUDED INDEFINITE LAY-OFF. APPLYING THIS PRINCIPLE IN THE CIRCUMSTANCES OF THE INSTANT CASE, APPLICATION FOR MEMBERSHIP SIGNED ON SEPTEMBER 23RD OR THEREAFTER BY EMPLOYEES LAID OFF INDEFINITELY ON SEPTEMBER 22ND, THE DATE OF APPLICATION, SHOULD NOT BE GIVEN WEIGHT. IF MY UNDERSTANDING IS CORRECT, THE BOARD HAS CHANGED A LONG-STANDING POLICY.



3. TURNING NOW TO THE MERITS OF THE INSTANT CASE, IT WOULD APPEAR THAT THIS IS THE FIRST TIME THE BOARD HAS BEEN REQUIRED TO DEAL WITH A LARGE LAY-OFF TAKING PLACE ON THE DATE OF APPLICATION BEFORE THE EMPLOYEES COMMENCED WORK AT THE NORMAL STARTING TIME OF THE DAY SHIFT. EXISTING POLICY AND REGULATIONS, WHEN MADE, DID NOT, I SUGGEST, CONTEMPLATE SUCH A SITUATION.

4. APPROXIMATELY 161 EMPLOYEES REPORTED FOR WORK AT THEIR USUAL STARTING TIME ON SEPTEMBER 22ND. OF THESE, 151 WERE NOT ALLOWED TO ENTER THE PREMISES AND WERE INFORMED BY COMPANY REPRESENTATIVES THAT THEY WERE LAID OFF WITH DATE OF RETURN UNCERTAIN. THERE IS NO SUGGESTION THAT THE LAY-OFF WAS FOR OTHER THAN LEGITIMATE BUSINESS REASONS. IN THESE SPECIAL CIRCUMSTANCES, BUT NOT TO BE CONSIDERED AS A PRECEDENT, I WOULD CONSIDER THEM TO BE AT WORK ON THE DATE OF APPLICATION AND THEIR NAMES SHOULD BE INCLUDED UNDER SCHEDULE "A".

5. A LARGE NUMBER OF THE EMPLOYEES SIGNED CARDS ON THE SAME DAY (SEPTEMBER 22ND) AFTER BEING LAID OFF INDEFINITELY. HAVING REPORTED FOR WORK, BUT NOT HAVING ACTUALLY PERFORMED WORK BECAUSE OF THE LAY-OFF, IT WOULD BE UNFAIR TO THE APPLICANT UNION NOT TO INCLUDE THESE CARDS FOR THE PURPOSES OF THE COUNT ALTHOUGH THEY WERE SIGNED AFTER THE EMPLOYEES HAD BEEN PLACED ON INDEFINITE LAY-OFF. HOWEVER, CARDS SIGNED ON SEPTEMBER 23RD AND THEREAFTER BY EMPLOYEES ON INDEFINITE LAY-OFF SHOULD NOT BE COUNTED.

6. OF THE 151 EMPLOYEES LAID OFF ON THE DATE OF APPLICATION, 62 HAVE BEEN RECALLED. THE BOARD HAS NO KNOWLEDGE AS TO WHEN, IF EVER, THE OTHER 89 EMPLOYEES WILL BE RECALLED TO WORK. MOREOVER, THERE IS NO CONTRACTUAL OBLIGATION WHATEVER FOR THE COMPANY TO RECALL THEM. ON THE OTHER HAND, THERE IS NO OBLIGATION ON THE PART OF THE EMPLOYEES TO RETURN TO WORK FOR THE RESPONDENT IF, AS AND WHEN FURTHER EMPLOYMENT IS OFFERED TO THEM. IN THE MEANTIME, THEY ARE COMPLETELY FREE TO SEEK AND ACCEPT EMPLOYMENT ELSEWHERE.

7. IN THE LIGHT OF ALL THESE CIRCUMSTANCES, I WOULD HAVE EXERCISED THE DISCRETION GIVEN THE BOARD UNDER SECTION 7(2) OF THE LABOUR RELATIONS ACT AND DIRECTED THAT A REPRESENTATION VOTE BE CONDUCTED. THIS WOULD HAVE ENABLED THE EMPLOYEES NOW AT WORK TO CONFIRM BY SECRET BALLOT THAT THEY WANT THE APPLICANT UNION TO REPRESENT THEM. IT WOULD ALSO REMOVE ANY UNCERTAINTIES AS TO THE UNION'S MANDATE TO REPRESENT THE EMPLOYEES THAT MUST EXIST AT THE PRESENT TIME DUE TO THE CIRCUMSTANCES UNDER WHICH MOST OF THE APPLICATIONS FOR MEMBERSHIP WERE SIGNED.

8. SINCE WRITING THE ABOVE, I HAVE BEEN AFFORDED THE OPPORTUNITY OF READING THE REMARKS OF THE MAJORITY CONCERNING MY DISSENT.

9. I HAVE CAREFULLY REVIEWED MY DECISION AND I FIND NO REASON TO AMEND IT. IT RECORDS THEREIN MY UNDERSTANDING OF BOARD POLICY AS IT RELATES TO THE MATTERS AT ISSUE IN THIS CASE.

13693-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. CITY CONCRETE FORMING LTD. (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA AND ITS LOCAL 247 (INTERVENER #1) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: ALBERT LALONDE FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, GEORGE MOULTON AND GEORGE ALLEN FOR INTERVENER #1, H. A. HERRON FOR INTERVENER #2.

DECISION OF THE BOARD: DECEMBER 18, 1967.

. . .

4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPOSED OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE GEOGRAPHIC AREA OF THE COUNTY OF LANARK AND THE SURROUNDING TOWNSHIPS OF NORTH AND SOUTH CROSBY, BASTARD, KITLEY, BURGESS AND ELMSLEY IN THE COUNTY OF LEEDS; WOLFORD, OXFORD, SOUTH GOWER IN THE COUNTY OF GRENVILLE; MARLBOROUGH IN THE COUNTY OF CARLETON; McNAB IN THE COUNTY OF RENFREW.

5. THE SITE OF THE JOB AT WHICH THE EMPLOYEES OF THE RESPONDENT WHO ARE THE SUBJECT OF THIS APPLICATION WERE WORKING AS OF THE DATE OF APPLICATION IS PERTH. OVER A PERIOD OF TIME, IN CERTIFICATION APPLICATIONS MADE UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT FOR EMPLOYEES ENGAGED IN WORK ON JOB SITES LOCATED IN THE COUNTY OF LANARK, THE BOARD HAS CONFINED THE GEOGRAPHIC AREA OF ITS CERTIFICATION TO A STANDARD AREA ENCOMPASSING ONLY THE COUNTY OF LANARK (BOARD GEOGRAPHIC AREA NO. 13). THE APPLICANT REQUESTED A HEARING ON THE APPLICATION BY THE BOARD FOR THE PURPOSE OF MAKING REPRESENTATIONS AS TO THE APPROPRIATENESS OF ITS PROPOSED UNIT WHICH EXTENDS BEYOND THE BOUNDARIES OF THE COUNTY OF LANARK.

6. IN ACCORDANCE WITH THE REQUEST OF THE APPLICANT, THE BOARD LISTED THIS MATTER FOR HEARING TO ALLOW THE APPLICANT AN OPPORTUNITY TO ADDUCE EVIDENCE AND MAKE SUBMISSIONS IN SUPPORT OF THE GEOGRAPHIC AREA WHICH IT IS SEEKING. ALTHOUGH NO OTHER TRADE UNIONS IN THE CONSTRUCTION INDUSTRY HAVE A DIRECT INTEREST IN THE PROCEEDING, THE BOARD DEEMED IT ADVISABLE AND NOTIFIED A COMBINED TOTAL OF EIGHTEEN TRADE UNIONS, CONSTRUCTION ASSOCIATIONS AND BUILDERS' EXCHANGES WHO MIGHT BE AFFECTED BY ANY DETERMINATION MADE BY THE BOARD AS TO THE APPROPRIATE GEOGRAPHIC AREA IN THE INSTANT APPLICATION. THE ABOVE ORGANIZATIONS WERE INVITED TO ATTEND AT THE HEARING AND WERE INFORMED THAT SHOULD THEY BE PRESENT THEY WOULD BE GIVEN AN OPPORTUNITY TO MAKE REPRESENTATIONS TO THE BOARD. DESPITE THE NOTIFICATIONS, OTHER THAN THE APPLICANT, ONLY THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA AND ITS KINGSTON LOCAL 247 AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 WERE REPRESENTED AT THE HEARING.

7. AT THE HEARING THE APPLICANT IN SUPPORT OF ITS SUBMISSION, ADVISED THE BOARD THAT ITS LOCAL 1988, BASED IN SMITH FALLS, IS A PARTY TO TWENTY-ONE COLLECTIVE AGREEMENTS WHICH ENCOMPASS THE GEOGRAPHIC AREA APPLIED FOR IN THE INSTANT APPLICATION. THE REPRESENTATIVE OF THE KINGSTON BASED LOCAL 247 OF THE LABOURERS AND THE REPRESENTATIVE OF THE OPERATING ENGINEERS OUTLINED TO THE BOARD THE BARGAINING PRACTICES OF THESE TWO UNIONS IN EASTERN ONTARIO.

8. IN LIGHT OF THE LIMITED INFORMATION WHICH THE BOARD WAS ABLE TO ELICIT AT THE HEARING WITH REGARD TO THE PATTERN OF COLLECTIVE BARGAINING AMONG THE CONSTRUCTION TRADE UNIONS AND CONTRACTORS OPERATING IN EASTERN ONTARIO, THE BOARD CAUSED A STUDY AND ANALYSIS TO BE MADE OF THE COLLECTIVE AGREEMENTS ON FILE FOR THE CONSTRUCTION INDUSTRY IN THAT AREA SO AS TO BE MORE ACCURATELY APPRAISED OF EXISTING GEOGRAPHIC PATTERNS OF COLLECTIVE BARGAINING WHERE THEY EXIST. ONLY BY SO DOING DID THE BOARD FEEL THAT IT WOULD BE IN A POSITION TO MAKE AN INFORMED DETERMINATION OF THE APPROPRIATE BARGAINING UNIT IN BOTH THE INSTANT AND SUBSEQUENT APPLICATIONS FOR CERTIFICATION IN THE EASTERN ONTARIO REGION. THE STUDY COVERED A PERIOD FROM JANUARY 1ST, 1965 TO THE PRESENT TIME AND REPRESENTS AN ANALYSIS OF 340 EXISTING COLLECTIVE AGREEMENTS AND 270 EXPIRED COLLECTIVE AGREEMENTS ENTERED INTO BY TWELVE CONSTRUCTION TRADE UNIONS AND THEIR LOCALS IN THE AREA. OUTLINED BELOW, IN SUMMARY FORM, IS THE INFORMATION REVEALED BY THE STUDY.

9. THE STRUCTURAL IRON WORKERS HAVE AN OTTAWA BASED LOCAL WHICH ORGANIZES THE WHOLE OF THE EASTERN PART OF THE PROVINCE EXTENDING FROM THE COUNTY OF HASTINGS TO THE QUEBEC BORDER. THE TEAMSTERS HAVE A LOCAL BASED IN OTTAWA, THE SCOPE OF ITS COLLECTIVE AGREEMENTS COVERING THE PROVINCE EAST OF A LINE FROM COLBORNE NORTH TO PEMBROKE. THE OPERATING ENGINEERS, WHO ORGANIZE OUT OF TORONTO, HAVE ONE SERIES OF COLLECTIVE AGREEMENTS ENCOMPASSING THE COUNTY OF ONTARIO ON THE WEST AND EXTENDING EASTWARD TO INCLUDE THE COUNTY OF ADDINGTON, AND ANOTHER SERIES OF COLLECTIVE AGREEMENTS COVERING THE PROVINCE EAST OF A LINE FROM KINGSTON NORTH TO ROLPHTON. IN ADDITION, FLOWING FROM CERTIFICATES GRANTED BY THE BOARD, THE OPERATING ENGINEERS HAVE A NUMBER OF COLLECTIVE AGREEMENTS FOR THE PRESENT STANDARD BOARD GEOGRAPHIC AREAS IN EASTERN ONTARIO. THE PLASTERERS AND LATHERS BOTH HAVE LOCALS IN OTTAWA AND BARGAIN WITH THE SAME CONSTRUCTION ASSOCIATIONS. THE GEOGRAPHIC AREA CONTAINED IN THE LATHERS' AGREEMENTS, HOWEVER, ARE DESCRIBED IN TERMS OF "IN AND OUT OF OTTAWA", WHEREAS THE PLASTERERS' AGREEMENTS TAKE IN A FIVE COUNTY AREA WHICH ENCOMPASS BOARD GEOGRAPHIC AREAS NOS. 13, 14 AND 15. THE PLASTERERS DO HAVE A NUMBER OF INDIVIDUAL COLLECTIVE AGREEMENTS FLOWING FROM CERTIFICATION WHICH COVER GEOGRAPHIC AREAS GRANTED BY THE BOARD.

10. THE PAINTERS, WHOSE EASTERN ONTARIO LOCAL IS BASED IN KINGSTON, HAVE A MULTI-COMPANY COLLECTIVE AGREEMENT (ALTHOUGH BARGAINED FOR OUTSIDE THE KINGSTON BUILDERS' EXCHANGE) WHICH COVERS THE COUNTIES OF LENNOX AND ADDINGTON, AND FRONTENAC (HEREINAFTER REFERRED TO AS "THE TWO COUNTY AREA")



AND THE COUNTY OF LEEDS TOGETHER WITH THE SOUTHERN HALF OF THE COUNTY OF GRENVILLE. THE ELECTRICAL WORKERS (I.B.E.W.) AND SHEET METAL WORKERS ON THE OTHER HAND HAVE LOCALS BOTH IN OTTAWA AND KINGSTON. THE OTTAWA LOCAL OF THE ELECTRICAL WORKERS INCORPORATES IN ITS AGREEMENTS THE COUNTY OF LANARK ALONG WITH THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT WHEREAS THE OTTAWA LOCAL OF THE SHEET METAL WORKERS, IN ADDITION, TAKES IN THE COUNTY OF RENFREW AND BEYOND TO THE NORTH AS WELL AS THE COUNTIES OF GRENVILLE, DUNDAS, STORMONT AND GLENGARRY. THE KINGSTON LOCAL OF THE SHEET METAL WORKERS INCLUDES IN ITS AGREEMENTS "THE TWO COUNTY AREA" PLUS THE COUNTY OF LEEDS. THE KINGSTON LOCAL OF THE ELECTRICAL WORKERS ALSO INCORPORATES THE COUNTIES OF HASTINGS AND GRENVILLE.

11. IN ADDITION TO HAVING LOCALS BASED IN OTTAWA AND KINGSTON, THE LABOURERS IN THE PAST HAVE HAD A LOCAL AT CORNWALL, WHEREAS THE BRICKLAYERS HAVE A THIRD LOCAL AT PEMBROKE. THE PLUMBERS, ON THE OTHER HAND, AS WELL AS HAVING LOCALS AT OTTAWA, KINGSTON, CORNWALL AND PEMBROKE, ALSO HAVE A LOCAL AT BELLEVILLE. THE KINGSTON LOCAL OF THE LABOURERS HAVE AN AGREEMENT WITH THE KINGSTON BUILDERS' EXCHANGE COVERING "THE TWO COUNTY AREA" AND ALL OF THE COUNTY OF LEEDS. THE COUNTY OF LANARK FALLS UNDER THE JURISDICTION OF THE OTTAWA LOCAL AND IS INCORPORATED IN AGREEMENTS WITH THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT. THE KINGSTON LOCAL OF THE LABOURERS ALSO HAS A COUPLE OF COLLECTIVE AGREEMENTS COVERING THE COUNTY OF GRENVILLE BY ITSELF. THE KINGSTON LOCAL OF THE BRICKLAYERS HAS AN AGREEMENT WITH THE KINGSTON BUILDERS' EXCHANGE COVERING "THE TWO COUNTY AREA" (MINUS THE TOWNSHIP OF RICHMOND IN ADDINGTON) AND MOST OF THE SOUTHERN HALF OF THE COUNTY OF LEEDS AND THE TOWNSHIP OF AUGUSTA IN THE COUNTY OF GRENVILLE. THE KINGSTON LOCAL OF THE PLUMBERS HAS A COLLECTIVE AGREEMENT WITH THE KINGSTON BUILDERS' EXCHANGE ENCOMPASSING THE COUNTY OF LEEDS AND THE EASTERN PART OF THE COUNTY OF GRENVILLE AS WELL AS "THE TWO COUNTY AREA". THE CORNWALL LOCAL OF THE PLUMBERS GENERALLY TAKES IN THE AREA EAST TO THE QUEBEC BORDER ALTHOUGH THERE IS SOME OVERLAPPING OF AGREEMENTS SIGNED BY THE KINGSTON AND CORNWALL LOCALS WITH REGARD TO THE TOWNSHIP OF AUGUSTA.

12. THE CARPENTERS, WHO ARE THE APPLICANT IN THIS CASE, HAVE SEVEN LOCAL UNIONS THROUGHOUT EASTERN ONTARIO WITH CENTRES IN OTTAWA, KINGSTON, BELLEVILLE, CORNWALL, PEMBROKE, SMITH FALLS AND BROCKVILLE. THE KINGSTON LOCAL HAS AN AGREEMENT WITH THE KINGSTON BUILDERS' EXCHANGE WHICH INCLUDES "THE TWO COUNTY AREA" TOGETHER WITH THE TOWNSHIP OF FRONT OF LEEDS AND LANSDOWNE IN THE COUNTY OF LEEDS. THE BROCKVILLE LOCAL HAS COLLECTIVE AGREEMENTS COVERING THE TOWNSHIPS OF FRONT OF ESCOTT, FRONT OF YONGE, REAR OF ESCOTT AND YONGE AND ELIZABETHTOWN IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURGH WHICH TAKES IN THE SOUTHERN HALF OF THE COUNTY OF GRENVILLE AND THE TWO MOST WESTERLY TOWNSHIPS, MOUNTAIN AND MATILDA IN THE COUNTY OF DUNDAS. THE COLLECTIVE AGREEMENTS OF THE SMITH FALLS LOCAL INCORPORATE ALL OF THE COUNTY OF LANARK, THE NORTHERN HALF OF THE COUNTIES OF LEEDS AND GRENVILLE AS WELL AS THE TOWNSHIP OF McNAB IN THE COUNTY OF RENFREW AND THE TOWNSHIP OF MARLBOROUGH IN THE COUNTY OF CARLETON.



13. THE COLLECTIVE AGREEMENTS ENTERED INTO BY THE STRUCTURAL IRON WORKERS, THE TEAMSTERS AND OPERATING ENGINEERS ARE OF NO ASSISTANCE IN DETERMINING APPROPRIATE GEOGRAPHIC AREAS IN EASTERN ONTARIO, BECAUSE OF THE LARGE AREAS COVERED BY THEIR AGREEMENTS WHICH ENCOMPASS SEVERAL ESTABLISHED BOARD AREAS. THE LATHERS' AGREEMENTS OFFER NO AID FOR THE OPPOSITE REASON THAT THEIR AGREEMENTS ARE CONFINED TO "IN AND OUT" OF OTTAWA. THE ONLY SIGNIFICANCE OF THE PLASTERERS IS THAT THE WHOLE OF THE COUNTY OF LANARK IS BARGAINED FOR INTACT, ALTHOUGH INCLUDED IN A MUCH LARGER FIVE COUNTY AREA SURROUNDING OTTAWA. THE RELEVANCE OF THE PAINTERS IS THAT THE AGREEMENTS NEGOTIATED BY THEIR KINGSTON LOCAL INCLUDES ALL OF THE COUNTY OF LEEDS AND THE SOUTHERN PART OF THE COUNTY OF GRENVILLE AS WELL AS "THE TWO COUNTY AREA". THE PLUMBERS FOLLOW A SIMILAR PATTERN ONLY IN THE COUNTY OF GRENVILLE THEY INCLUDE THE NORTHERN HALF OF THE COUNTY RATHER THAN THE SOUTHERN HALF, ALTHOUGH SOMETIMES THEY INCORPORATE THE TOWNSHIP OF AUGUSTA. IN ADDITION TO "THE TWO COUNTY AREA", THE LABOURERS COVER THE COUNTY OF LEEDS AS DO THE BRICKLAYERS WITH THE ADDITION OF THE TOWNSHIP OF AUGUSTA IN THE COUNTY OF GRENVILLE. THE SMITH FALLS LOCAL OF THE CARPENTERS, BEING LOCATED ON THE BORDER OF THE COUNTY OF LANARK, EXTENDS THE AREA OF ITS AGREEMENTS SOUTHWARD TO INCLUDE THE NORTHERN HALF OF THE COUNTIES OF LEEDS AND GRENVILLE. THE PRESENCE OF A LOCAL AT BROCKVILLE HAS CONFINED THE KINGSTON LOCAL'S EASTWARD EXTENSION OF "THE TWO COUNTY AREA" TO THE INCLUSION OF ONLY THE WESTERN PART OF THE SOUTHERN HALF OF THE COUNTY OF LEEDS.

14. DESCRIBED IN WRITING AS ABOVE, NO PATTERN OF COLLECTIVE BARGAINING BY THE TWELVE CONSTRUCTION TRADE UNIONS IS EASILY DISCERNIBLE. HOWEVER, WHEN THE GEOGRAPHIC SCOPE OF THEIR PAST AND PRESENT COLLECTIVE AGREEMENTS IS TRACED ON MAPS AND ANALYSED SOME PATTERNS OF BARGAINING DO EMERGE. ONE IS A GENERAL TREND AMONG OTTAWA BASED LOCALS TO INCORPORATE THE COUNTY OF LANARK IN BARGAINING UNITS WITH THE COUNTIES OF CARLETON, RUSSELL, PRESCOTT AND SOMETIMES RENFREW. THE CARPENTERS DO NOT FOLLOW THIS PATTERN BECAUSE OF ITS LOCAL IN SMITH FALLS. THE MOST SIGNIFICANT THING REVEALED BY THE STUDY, HOWEVER, IS THAT MOST OF THE UNIONS WITH LOCALS BASED IN KINGSTON HAVE BEEN GRADUALLY EXTENDING THE GEOGRAPHIC AREA ENCOMPASSED IN THEIR COLLECTIVE AGREEMENTS EASTWARD FROM "THE TWO COUNTY AREA" TO INCLUDE ALL OR PARTS OF THE COUNTIES OF LEEDS AND GRENVILLE. IN LIGHT OF THIS TREND, THE BOARD IS OF THE VIEW THAT THE PRESENT "TWO COUNTY AREA" OF LENNOX AND ADDINGTON AND FRONTENAC SHOULD BE ENLARGED TO CONFORM WITH THIS DEVELOPMENT. THE DIFFICULT QUESTION THAT THE BOARD MUST DECIDE IS HOW MUCH TERRITORY TO THE EAST SHOULD BE INCORPORATED INTO "THE TWO COUNTY AREA".

15. TO EXTEND THE GEOGRAPHIC AREA OF THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC TO INCLUDE THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, FRONT OF ESCOTT, FRONT OF YONGE, REAR OF YONGE AND ESCOTT IN THE COUNTY OF LEEDS, IN SOME MEASURE, CONFORMS WITH EXISTING PATTERNS OF COLLECTIVE BARGAINING BY THE CONSTRUCTION UNION LOCALS IN KINGSTON. AT THE SAME TIME THIS ALSO PRESERVES FOR THE CARPENTERS' LOCAL IN BROCKVILLE JURISDICTION OVER THE TOWNSHIP OF ELIZABETHTOWN

IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURGH IN THE COUNTY OF GRENVILLE. BASED ON THE ORGANIZING THAT HAS BEEN DONE BY THE CONSTRUCTION TRADE UNIONS IN THE CORNWALL AREA, WE SEE NO REASON TO ALTER THE PRESENT AREA OF THE UNITED COUNTIES OF DUNDAS, STORMONT AND GLENGARRY WHICH HAS BEEN GRANTED REGULARLY BY THE BOARD.

16. THE ABOVE DESCRIBED EXTENSION TO THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC TAKEN TOGETHER WITH THE ADJACENT TOWNSHIPS OF ELIZABETHTOWN, AUGUSTA AND EDWARDSBURGH ENCOMPASS ONLY THE SOUTHERN HALVES OF THE COUNTIES OF LEEDS AND GRENVILLE. THIS DOES NOT SERIOUSLY DISRUPT THE BARGAINING PATTERNS OF MOST UNION LOCALS BASED IN KINGSTON. MOREOVER, IT PERMITS THE EXTENSION OF THE PRESENT BOARD GEOGRAPHIC AREA NO. 13 SOUTHWARD TO TAKE IN THE NORTHERN HALVES OF THE COUNTIES OF LEEDS AND GRENVILLE. THIS MAKES A MORE FEASIBLE AREA FOR COLLECTIVE BARGAINING FOR THE CARPENTERS' LOCAL AT SMITH FALLS IN VIEW OF ITS LOCATION ON THE SOUTHERN BOUNDARY OF THE COUNTY OF LANARK. WITH THE EXCEPTION OF THE CARPENTERS, THOSE UNIONS WITH LOCALS BASED IN OTTAWA THAT ENCOMPASS THE COUNTY OF CARLETON IN BARGAINING UNITS MAKE NO EXCLUSION FOR THE TOWNSHIP OF MARLBOROUGH. SIMILARLY, WHEN THEY ENCOMPASS THE COUNTY OF RENFREW IN BARGAINING UNITS, NO EXCLUSION IS MADE FOR THE TOWNSHIP OF McNAB. WE SEE NO REASON WHY THIS PRACTICE SHOULD NOT BE FOLLOWED BY THE BOARD.

17. APPLYING ALL OF THE FOREGOING TO THE INSTANT APPLICATION, THE BOARD FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

18. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 5TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13728-67-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) v. ELECTROHOME LIMITED (RESPONDENT) v. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #1) v. AMALGAMATED WORKERS UNION (INTERVENER #2).

- AND -

13737-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. ELECTROHOME LIMITED (RESPONDENT) v. AMALGAMATED WORKERS UNION (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: S. L. ROBINS, Q.C., R. KOSKIE AND GEORGE PETTA FOR LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, M. A. HEELEY FOR THE CANADIAN UNION OF OPERATING ENGINEERS, GEORGE FERGUSON, Q.C., C. ALLGEIER AND M. MONTEITH FOR THE RESPONDENT, GORDON A. MACKAY, Q.C., ROBERT W. ABEL AND ARTHUR BALABAZUK FOR THE AMALGAMATED WORKERS UNION.

DECISION OF THE BOARD: DECEMBER 19, 1967.

1. FOLLOWING THE TAKING OF THE REPRESENTATION VOTES IN THESE MATTERS, A HEARING WAS HELD ON DECEMBER 7TH, 1967 TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE CANADIAN UNION OF OPERATING ENGINEERS. AT THE HEARING, AN OPPORTUNITY WAS GIVEN TO ALL PARTIES TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT AND WITH RESPECT TO THE ALLEGATIONS AND CHARGES CONCERNING THE CONDUCT OF THE REPRESENTATION VOTES MADE BY THE RESPONDENT AND AMALGAMATED WORKERS UNION. IN ADDITION, ALTHOUGH THE RESPONDENT AND THE AMALGAMATED WORKERS UNION EXPRESSED DISSATISFACTION WITH CERTAIN CONCLUSIONS REACHED BY THE BOARD IN ITS DECISION DATED NOVEMBER 1ST, 1967, IN THIS MATTER, HOWEVER, THEY FAILED TO ESTABLISH (ALTHOUGH INVITED TO DO SO AT THE HEARING) THAT THE BOARD SHOULD VARY OR REVOKE ITS DECISION OF NOVEMBER 1ST, 1967.

2. DURING THE COURSE OF THE HEARING, AFTER COUNSEL FOR THE AMALGAMATED WORKERS UNION HAD INDICATED THAT HE HAD NO FURTHER EVIDENCE TO CALL AND AFTER THE OTHER PARTIES HAD ADDUCED ALL THEIR EVIDENCE, AND AFTER COUNSEL FOR THE RESPONDENT HAD COMPLETED HIS ARGUMENT, COUNSEL FOR THE AMALGAMATED WORKERS UNION REQUESTED LEAVE TO CALL WITNESSES TO ADDUCE FURTHER EVIDENCE. THE BOARD RULED THAT, HAVING REGARD FOR THE TIME AT WHICH THE REQUEST WAS MADE AND FOR THE PURPOSE OF MAINTAINING SOME ORDER IN THE PROCEEDINGS, THE AMALGAMATED WORKERS UNION SHOULD NOT BE GIVEN FURTHER OPPORTUNITY TO ADDUCE ADDITIONAL EVIDENCE SINCE IT HAD FULL OPPORTUNITY TO ADDUCE ALL ITS EVIDENCE AT THE PROPER TIME AND THE REQUEST OF THE AMALGAMATED WORKERS UNION WAS ACCORDINGLY DENIED.

3. HAVING REGARD TO ALL THE EVIDENCE CONCERNING THE PROPAGANDA AND ELECTIONEERING ENGAGED IN BY THE PARTIES AND FOR THE REASONS GIVEN BY THE BOARD IN THE STAUFFER-DOBBIE CASE (1959) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,147; C.L.S. 76-658, AND IN THE INTERNATIONAL NICKEL COMPANY OF CANADA CASE, 63 C.L.L.C. ¶16,284, THE BOARD FINDS THAT THE EVIDENCE FAILED TO DISCLOSE THAT THE ELECTIONEERING AND PROPAGANDA WAS OF SUCH A NATURE THAT THE ABILITY OF THE EMPLOYEES TO EVALUATE SUCH PROPAGANDA AND ELECTIONEERING WAS IMPAIRED TO SUCH AN EXTENT THAT THE FREE DESIRES OF THE EMPLOYEES COULD NOT BE DETERMINED ON A REPRESENTATION VOTE. WHILE THE BOARD ACKNOWLEDGES THAT CERTAIN PORTIONS OF THE MATERIAL OBJECTED TO WOULD BE IRRITATING TO THE PARTY AGAINST WHOM IT WAS DIRECTED, THERE WAS NOTHING TO INDICATE THAT THE VALUE OF THE REPRESENTATION VOTE AS A TOOL TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES WAS IMPAIRED IN ANY MEANINGFUL MANNER.

4. THE BOARD THEREFORE FINDS THAT THE RESULT FLOWING FROM THE REPRESENTATION VOTE SHOULD NOT BE INTERFERED WITH.

5. DEALING NEXT WITH THE APPROPRIATENESS OF THE CRAFT UNIT PROPOSED BY THE CANADIAN UNION OF OPERATING ENGINEERS, THE BOARD FINDS, FOR THE REASONS GIVEN IN THE DARLING AND COMPANY OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 501, THAT SINCE THE AMALGAMATED WORKERS UNION WERE DEFEATED IN THE REPRESENTATION VOTE WITH LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, THE HISTORY OF REPRESENTATION OF THE CRAFT WAS THEREBY DISCONTINUED AND THE CRAFT EMPLOYEES ARE NOT CURRENTLY INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT. BECAUSE OF THE BREAK IN THE REPRESENTATION OF THE CRAFT EMPLOYEES DESCRIBED ABOVE, AND FOR THE PURPOSE OF DEALING WITH THE TIMELY APPLICATION IN THESE MATTERS, THE BOARD FINDS THAT IT HAS NO DISCRETION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT AND IS BOUND BY THE MANDATORY PROVISIONS CONTAINED IN THE FIRST PART OF SECTION 6(2). IN ADDITION, ON THE EVIDENCE BEFORE US, WE FIND THAT THE MAINTENANCE EMPLOYEES OF THE RESPONDENT WHO DO THE MAJOR OVERHAUL WORK ON THE BOILERS ARE NOT "REGULARLY" EMPLOYED IN THE BOILER ROOM AS HELPERS AND THEREFORE ARE NOT INCLUDED IN THE CRAFT BARGAINING UNIT OF STATIONARY ENGINEERS. THE FACT THAT THERE ARE OCCASIONAL TIMES WHEN SUCH MAINTENANCE EMPLOYEES WORK WITH THE STATIONARY ENGINEERS, SUCH ISOLATED OCCASIONS ARE NOT SUFFICIENT TO DESTROY THE APPROPRIATENESS OF THE CRAFT BARGAINING UNIT IN THIS CASE.

6. THE BOARD THEREFORE FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM OF THE RESPONDENT KITCHENER, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED ABOVE WERE MEMBERS OF THE CANADIAN UNION OF OPERATING ENGINEERS AT THE TIME THE APPLICATION WAS MADE.

8. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST IN VOTING CONSTITUENCY #2 DESCRIBED IN THE BOARD'S DECISION OF NOVEMBER 1ST, 1967 TO BE COUNTED AND REPORT TO THE BOARD.

9. AT THE HEARING, THE RESPONDENT ARGUED THAT IN ADDITION TO THE HOURLY RATED EMPLOYEES WHO HAD BEEN REPRESENTED BY THE AMALGAMATED WORKERS UNION, THERE WERE A GREAT NUMBER OF OTHER EMPLOYEES WHO WERE NOT REPRESENTED BUT WHO WOULD BE CLASSIFIED AS EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT. THE RESPONDENT THEREFORE ARGUED THAT THE "APPROPRIATE BARGAINING UNIT" SHOULD INCLUDE ALL EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT. IT WAS THE RESPONDENT'S POSITION THAT IF THE APPROPRIATE BARGAINING UNIT DID INCLUDE SUCH ADDITIONAL PERSONS THEN LOCAL 804 WOULD HAVE HAD LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN SUCH



BARGAINING UNIT AS MEMBERS AT THE TIME THE APPLICATION WAS MADE. ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 8(4) OF THE ACT, THE APPLICATION FOR CERTIFICATION OF LOCAL 804 SHOULD BE DISMISSED. FOR THE PURPOSE OF DEALING WITH THE RESPONDENT'S ARGUMENT, THE BOARD WILL ASSUME THAT THERE ARE A LARGE NUMBER OF ADDITIONAL EMPLOYEES WHO WOULD NORMALLY BE INCLUDED IN AN APPROPRIATE BARGAINING UNIT WHERE THERE HAS BEEN NO HISTORY OF REPRESENTATION OF EMPLOYEES OF THE RESPONDENT. HOWEVER, IN THIS CASE, BOTH THE RESPONDENT AND THE AMALGAMATED WORKERS UNION HAVE FOR TWENTY-FIVE YEARS RECOGNIZED A BARGAINING UNIT TO BE APPROPRIATE WHICH EXCLUDED SUCH ADDITIONAL PERSONS. ON AN APPLICATION FOR CERTIFICATION WHERE THE APPLICANT UNION SEEKS TO DISPLACE AN INCUMBENT UNION, THE VERY LEAST SUCH APPLICANT UNION IS ENTITLED TO, IF IT WINS THE REPRESENTATION VOTE, IS THE SAME UNIT AS WAS NORMALLY REPRESENTED BY THE INCUMBENT TRADE UNION. HAD LOCAL 804 IN THIS CASE ORGANIZED THE ADDITIONAL EMPLOYEES IT MAY WELL BE THAT LOCAL 804 WOULD HAVE BEEN ENTITLED TO REPRESENT A BARGAINING UNIT WHICH INCLUDED A LARGER NUMBER OF PERSONS THAN WAS NORMALLY REPRESENTED BY THE AMALGAMATED WORKERS UNION. HOWEVER, LOCAL 804 CONFINED ITS ORGANIZING CAMPAIGN TO THE UNIT OF EMPLOYEES WHICH WAS REPRESENTED BY THE AMALGAMATED WORKERS UNION AND IS NOT ENTITLED TO A UNIT WHICH INCLUDES ANY ADDITIONAL PERSONS. THEREFORE, SINCE LOCAL 804 HAS SUCCEEDED IN DEFEATING THE AMALGAMATED WORKERS UNION IN THE REPRESENTATION VOTE, LOCAL 804 IS THEREFORE ENTITLED TO REPRESENT THE EMPLOYEES FORMERLY REPRESENTED BY THE AMALGAMATED WORKERS UNION.

10. SINCE THE DESCRIPTION OF THE BARGAINING UNIT FORMERLY REPRESENTED BY THE AMALGAMATED WORKERS UNION IS IN THE TERMS OF "ALL HOURLY RATED EMPLOYEES" AND SINCE SUCH DESCRIPTION MAY LEAD TO PERSONS BEING REMOVED FROM THE BARGAINING UNIT OR INCLUDED IN THE BARGAINING UNIT SIMPLY BY CHANGING THEIR METHOD OF PAY WITHOUT ANY CHANGE IN THEIR DUTIES AND RESPONSIBILITIES, THE BOARD HAS FOR A LONG TIME ABANDONED THE USE OF SUCH DESCRIPTION OR BARGAINING UNITS. HOWEVER, IN ORDER THAT THE BOARD COMPLY WITH ITS CURRENT PRACTICE OF DESCRIBING BARGAINING UNITS IN THE TERMS OF "ALL EMPLOYEES OF THE RESPONDENT", HAVING REGARD TO THE MEMBERSHIP POSITION OF LOCAL 804, IT IS NECESSARY TO DETERMINE WHICH EMPLOYEES WERE NOT FORMERLY REPRESENTED BY THE AMALGAMATED WORKERS UNION SINCE SUCH EMPLOYEES CANNOT NOW BE INCLUDED IN THE BARGAINING UNIT TO BE REPRESENTED BY LOCAL 804.

11. MR. A. A. MORROW, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION AND DESCRIPTION OF THE BARGAINING UNIT AND IN PARTICULAR ON THE IDENTITY OF PERSONS AND CLASSIFICATIONS WHO, ALTHOUGH EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT, WERE NOT HOURLY RATED EMPLOYEES ON THE DATE THIS APPLICATION WAS MADE AND WHO WOULD THEREFORE BE EXCLUDED FROM THE BARGAINING UNIT.

13766-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772  
(APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED, ST. THOMAS  
ASSEMBLY PLANT (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE,

AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW)  
(INTERVENER).

- AND -

13793-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V.  
FORD MOTOR COMPANY OF CANADA, LIMITED, ST. THOMAS ASSEMBLY PLANT  
(RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL  
772 (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD:                      DECEMBER 19, 1967.

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4.            ON OCTOBER 19TH, 1967, THE INTERNATIONAL UNION OF OPERATING ENGINEERS (HEREINAFTER REFERRED TO AS I.U.O.E.) APPLIED TO THIS BOARD TO BE CERTIFIED FOR ALL STATIONARY ENGINEERS EMPLOYED IN THE OPERATION OF BOILERS, REFRIGERATION AND HEATING UNITS, COMPRESSORS, PUMPS AND DEMINERALIZERS AT THE ADMINISTRATION OFFICE, COMPRESSOR ROOM, PUMP HOUSE, SEWAGE DISPOSAL PLANT AND PONDING BASIN OF THE RESPONDENT'S PLANT AT TALBOTVILLE. THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS OCTOBER 27TH, 1967.

5.            ON OCTOBER 27TH, 1967, THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (HEREINAFTER REFERRED TO AS UAW) APPLIED TO THIS BOARD TO BE CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SOUTHWOLD WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. STATIONARY ENGINEERS WOULD BE INCLUDED IN SUCH A UNIT. THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS NOVEMBER 6TH, 1967.

6.            THE BOARD, BY ITS DECISION DATED NOVEMBER 9TH, 1967, DIRECTED THAT THESE MATTERS BE CONSOLIDATED.

7.            SINCE THE APPLICATION OF THE UAW WAS MADE BY THE TERMINAL DATE OF THE APPLICATION OF THE I.U.O.E., AND SINCE THE EMPLOYEES FOR WHOM THE I.U.O.E. HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT ARE INCLUDED IN THE UNIT OF EMPLOYEES FOR WHOM THE UAW SEEK CERTIFICATION, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 77(3)(A) OF THE LABOUR RELATIONS ACT, DIRECTS THAT THE APPLICATION OF THE UAW BE TREATED AS HAVING BEEN MADE ON OCTOBER 19TH, 1967, THE DATE OF MAKING OF THE APPLICATION BY THE I.U.O.E.

8.            THE ISSUE TO BE DETERMINED IN THE APPLICATION OF THE I.U.O.E. IS WHETHER THE GROUP OF EMPLOYEES FOR WHICH IT SEEKS CERTIFICATION AS BARGAINING AGENT IS A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. FOLLOWING THE HEARING ON NOVEMBER 14TH, 1967, THE BOARD CONVENED A HEARING AT THE RESPONDENT'S PLANT ON NOVEMBER 24TH, 1967 AND ACCOMPANIED BY REPRESENTATIVES OF ALL PARTIES CONCERNED, INSPECTED THE

RESPONDENT'S PLANT IN SO FAR AS THE EQUIPMENT AND AREAS REFERABLE TO THE WORK PERFORMED BY THOSE PERSONS CLAIMED TO BE IN THE APPROPRIATE UNIT SUGGESTED BY THE I.U.O.E. THE BOARD AT THAT TIME DIRECTED THAT SHOULD ANY PARTY DESIRE TO MAKE FURTHER REPRESENTATIONS TO THE BOARD CONCERNING THE PROPOSED BARGAINING UNIT IN THIS APPLICATION, WRITTEN SUBMISSIONS WOULD BE CONSIDERED BY THE BOARD IF RECEIVED BY DECEMBER 4TH, 1967. IN THIS REGARD, THE BOARD RECEIVED AND CONSIDERED SUBMISSIONS FROM THE I.U.O.E. AND THE RESPONDENT. THE UAW ADVISED THE BOARD BY TELEGRAM DATED DECEMBER 5TH THAT IT DID NOT WISH TO MAKE ANY FURTHER SUBMISSION.

9. THE I.U.O.E. SEEKS TO BECOME THE BARGAINING AGENT FOR A GROUP OF EMPLOYEES CLASSIFIED BY THE RESPONDENT AS UTILITIESMEN, SEPARATE AND APART FROM THE MAIN INDUSTRIAL UNIT. THE I.U.O.E.'S SUBMISSION IS THAT THIS GROUP CONSISTING OF FOUR (ACCORDING TO THE SUBMISSION OF THE RESPONDENT, THE GROUP INCLUDES FIVE STATIONARY ENGINEERS AND ONE OTHER EMPLOYEE) STATIONARY ENGINEERS FORMS A CRAFT UNIT WITHIN THE MEANING OF SECTION 6(2) OF THE LABOUR RELATIONS ACT. THE I.U.O.E. STATED THAT IT IS A CRAFT UNION AND HISTORICALLY BARGAINS FOR A CERTAIN GROUP IN THIS FIELD. DUE, HOWEVER, TO THE SPECIAL CIRCUMSTANCES IN THE DESIGN OF THE RESPONDENT'S PLANT AND THE DUTIES AND RESPONSIBILITIES OF THOSE PERSONS IN THE BARGAINING UNIT CLAIMED BY THE I.U.O.E., IT DID NOT APPLY FOR THE REGULAR UNIT COVERING STATIONARY ENGINEERS THAT HAS BEEN USUALLY GRANTED TO IT BY THE BOARD IN OTHER CASES. THE I.U.O.E. ARGUES THAT THE LAY OUT OF THE RESPONDENT'S PLANT DOES NOT ALTER THE FACT THAT A POWER HOUSE EXISTS WITHIN IT WHICH IS OPERATED SOLELY BY STATIONARY ENGINEERS. IN ANY EVENT, IT FURTHER POINTS OUT THAT THE BOARD HAS REGULARLY CERTIFIED ENGINEERS UNIONS TO REPRESENT EMPLOYEES OPERATING EQUIPMENT WITHIN THE BOUNDARIES OF A PLANT WHERE NO SEPARATE POWER HOUSE IS LOCATED. IT ALSO SUBMITS THAT THE BOARD HAS GRANTED A UNIT FOR STATIONARY ENGINEERS "IN AND OUT OF A POWER HOUSE" AND SUGGESTS THAT WOULD BE SIMILAR TO THE PRESENT SITUATION AS THE NORMAL DUTIES OF THESE EMPLOYEES BEGIN AT THE ROOM WHERE THE COMPRESSORS ARE LOCATED AND THEREAFTER THEY MAKE TOURS THROUGHOUT THE PLANT COVERING OTHER EQUIPMENT.

10. AN APPLICANT WHICH SEEKS TO BRING ITSELF WITHIN THE MANDATORY PROVISIONS OF SUBSECTION 2 OF SECTION 6 OF THE LABOUR RELATIONS ACT MUST ESTABLISH THREE THINGS: (1) THAT THE EMPLOYEES FOR WHOM IT IS SEEKING TO REPRESENT ARE EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES; (2) THAT THEY COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT; (3) THAT THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT. IN CERTAIN CIRCUMSTANCES STATIONARY ENGINEERS HAVE BEEN RECOGNIZED BY THE BOARD AS CONSTITUTING A CRAFT UNIT WHERE CERTIFICATION ON THEIR BEHALF HAS BEEN SOUGHT BY STATIONARY ENGINEERS UNIONS. IN THIS RESPECT, THE I.U.O.E. WOULD QUALIFY FOR THE PURPOSES OF THE THIRD CONDITION AFOREMENTIONED. IT IS APPARENT HOWEVER, CONSIDERABLE DIFFERENCES ARISE IN THE PRESENT MATTER AS CONTRASTED WITH OTHER SITUATIONS

WHERE THE BOARD HAS DEEMED STATIONARY ENGINEERS AS A GROUP TO BE AN APPROPRIATE BARGAINING UNIT. CONSEQUENTLY, THE BOARD MUST CAREFULLY EXAMINE THE OTHER TWO CONDITIONS OF THE CRAFT UNIT SECTION.

11. THE PERSONS CLASSIFIED BY THE RESPONDENT AS UTILITIESMEN ARE RESPONSIBLE FOR A VARIETY OF EQUIPMENT LOCATED THROUGHOUT THE INTERIOR OF THE PLANT, ON THE ROOF OF THE PLANT AND ON THE PREMISES OUTSIDE THE PLANT. IN THIS GROUP ARE FIVE STATIONARY ENGINEERS AND ONE WHO IS NOT BUT WHO HAS BEEN ASSIGNED TO WORK WITH THEM. IT IS CLEAR THAT THERE IS ONLY ONE ITEM OF EQUIPMENT WHICH REQUIRES THE SERVICE OF A STATIONARY ENGINEER UNDER THE OPERATING ENGINEERS ACT. THIS IS THE COMPRESSOR INSTALLATION LOCATED IN THE MAIN BUILDING. THE COMPRESSORS ARE IN A SEPARATE ENCLOSED AREA OF THE PLANT WHERE OTHER EQUIPMENT SUCH AS SWITCH GEAR AND THE COOLING SYSTEM FOR THE ELECTRIC COAT PROCESS ARE ALSO INSTALLED. THESE OTHER TYPES OF EQUIPMENT IN THIS AREA ARE MAINTAINED BY ELECTRICIANS AND STEAMFITTERS. THERE IS NO POWER HOUSE OR BOILER ROOM, AS USUALLY REFERRED TO, AT THE RESPONDENT'S PLANT. THE UTILITIESMEN HAVE VARIOUS DUTIES OTHER THAN ATTENDING THE COMPRESSORS SUCH AS INSPECTING THE OTHER EQUIPMENT AND CARRYING OUT NECESSARY REPAIRS TO SUCH EQUIPMENT ALONG WITH ELECTRICIANS, STEAMFITTERS AND OTHER EMPLOYEES WHO MAY BE REQUIRED. THE UTILITIESMEN WORK IN CLOSE ASSOCIATION WITH PRODUCTION EMPLOYEES. THEY HAVE THE SAME FACILITIES AND SIMILAR WORKING CONDITIONS APPLICABLE TO ALL OTHER PLANT PERSONNEL, WHICH ARE ADMINISTERED BY THE RESPONDENT IN THE SAME MANNER. WITH THE EXCEPTION OF THE AREA WHERE THE COMPRESSORS ARE INSTALLED, THEY WORK IN THE SAME PLANT AREA AS THE OTHER EMPLOYEES. IN SOME INSTANCES THERE IS INTERCHANGABILITY OF FUNCTION AND DUTIES WITH OTHER EMPLOYEES AS OTHER EMPLOYEES WHO ARE FAMILIAR WITH THE INSTALLATIONS BUT WHO ARE NOT CLASSIFIED AS UTILITIESMEN MAY PERFORM MANY OF THE SAME FUNCTIONS AS THE UTILITIESMEN. HAVING REGARD TO THEIR VARIOUS RESPONSIBILITIES IT IS EVIDENT THAT THEY SHARE A STRONG COMMUNITY OF INTEREST WITH THE PRODUCTION EMPLOYEES IN THE REGULAR PERFORMANCE OF THEIR WORK. ON A CAREFUL CONSIDERATION OF ALL THE FACTS AND CIRCUMSTANCES INVOLVED IN THIS MATTER, WE FIND THAT THOSE EMPLOYEES DESIGNATED AS UTILITIESMEN AS A GROUP ARE NOT TRULY DISTINGUISHABLE FROM THE OTHER EMPLOYEES IN THE PLANT.

12. FOR THE FOREGOING REASONS, THE BARGAINING UNIT PROPOSED BY THE I.U.O.E. DOES NOT MEET THE REQUIREMENTS OF SECTION 6(2) OF THE ACT AND SINCE THE MEMBERSHIP CLAIMED BY THE I.U.O.E. WOULD BE LESS THAN 45% OF EMPLOYEES IN ANY OTHER UNIT THAT THE BOARD MIGHT FIND TO BE APPROPRIATE PURSUANT TO SECTION 6(1) OF THE ACT, THE APPLICATION OF THE I.U.O.E. IS ACCORDINGLY DISMISSED.

13. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SOUTHWOLD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.



14. FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE UAW AND THE RESPONDENT THAT THE ABOVE BARGAINING UNIT DOES NOT INCLUDE "SALARIED EMPLOYEES PERFORMING OFFICE OPERATIONS IN THE PLANT, QUALIFIED ENGINEERS DOING ENGINEER'S WORK; DRAFTSMEN; CHEMISTS; METALLURGISTS; TIME STUDY AND METHODS MAN; TIME CLERKS; SALARIED CONFIDENTIAL CLERKS; EMPLOYEES OF THE INDUSTRIAL RELATIONS DEPARTMENT; BUDGET AND PLANT WORK ORDER ANALYSTS; SALARIED QUALITY CONTROL ENGINEERS AND TECHNICIANS; IT IS UNDERSTOOD AND AGREED THAT THE ABOVE BARGAINING UNIT DOES NOT INCLUDE SALARIED TECHNICAL PERSONNEL PERFORMING WORK IN THE PLANT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXAMPLES OF SUCH TECHNICAL PERSONNEL ARE: PROCESSORS, WORK STANDARDS AND METHODS MEN, CHEMISTS, METALLURGISTS, QUALITY CONTROL ENGINEERS AND TECHNICIANS, MATERIAL HANDLING METHODS MEN".

15. THE RESPONDENT SUBMITTED AT THE HEARING THAT THE UAW APPLICATION WAS PREMATURE BY REASON OF BUILDUP IN THE WORK FORCE AT THE RESPONDENT'S PLANT. ACCORDING TO THE EVIDENCE, AS OF THE DATE OF THE APPLICATION, THERE WERE 496 EMPLOYEES OF THE RESPONDENT. COUNSEL FOR THE RESPONDENT STATED THAT THERE WOULD BE 353 ADDITIONAL EMPLOYEES HIRED AFTER THIS DATE BUT PRIOR TO DECEMBER 15TH, 1967, WHICH WAS THE EXPECTED DATE FOR FULL PRODUCTION IN THE PLANT. IT WAS ARGUED BY THE UAW THAT MORE THAN 50% OF THE TOTAL WORK FORCE WERE WORKING AT THE DATE OF THE APPLICATION. IN ADDITION A PARTIAL NIGHT SHIFT WAS IN OPERATION AND A LARGE NUMBER OF OCCUPATIONAL CLASSIFICATIONS WERE FILLED. OF THE RESPONDENT'S EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE APPLICATION, THE UAW CLAIMED APPROXIMATELY 88% AS MEMBERS.

16. IN CONSIDERING A BUILD UP SITUATION, THE BOARD MUST ASSESS THE RIGHTS TO COLLECTIVE BARGAINING OF THE PRESENT EMPLOYEES AND THE RIGHTS OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, WE ARE OF THE OPINION THAT AS OF THE DATE OF THE APPLICATION THE EMPLOYEES CONSTITUTED A SUBSTANTIAL AND REPRESENTATIVE PROPORTION OF THE WORK FORCE TO BE EMPLOYED. THE BOARD, THEREFORE, WILL NOT POSTPONE THE MAKING OF A FINAL DETERMINATION OF THIS MATTER OR ORDER A REPRESENTATION VOTE AS REQUESTED BY THE RESPONDENT.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE UAW ON NOVEMBER 6TH, 1967 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A CERTIFICATE WILL ISSUE TO THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW).

13786-67-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. THE WATSON  
MANUFACTURING COMPANY OF PARIS LIMITED (RESPONDENT) V. TEXTILE  
WORKERS UNION OF AMERICA, CLC, AFL-CIO (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND  
J. E. C. ROBINSON.

APPEARANCES AT HEARING: R. K. ROWLEY AND M. PARENT FOR THE APPLICANT,  
E. L. STRINGER AND A. WILSON FOR THE RESPONDENT, JOHN OSLER, Q.C.,  
CHAS. CLARK AND ELVIO DALLORTO FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 28, 1967.

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2. THIS MATTER CAME ON FOR CONTINUATION OF HEARING TO INQUIRE  
INTO ALL THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEE RELATING TO  
THE APPLICATION FOR MEMBERSHIP OF R. SPENCE, WHICH WAS SUBMITTED BY  
THE TEXTILE WORKERS UNION OF AMERICA, WAS ALLEGED TO HAVE BEEN PAID.

3. THERE WAS SUBSTANTIAL AGREEMENT BETWEEN THE PARTIES CONCERN-  
ING MANY OF THE FACTS WITH RESPECT TO THE MANNER IN WHICH R. SPENCE  
SIGNED HER MEMBERSHIP CARD.

4. THE EVIDENCE WAS THAT ELVIO DALLORTO, A BUSINESS AGENT OF  
THE TEXTILE WORKERS UNION OF AMERICA, WAS IN CHARGE OF THAT UNION'S  
CAMPAIGN TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT AND HAD PERSONALLY  
ACTED AS COLLECTOR WITH RESPECT TO A MAJORITY OF THE MEMBERSHIP CARDS  
SUBMITTED BY HIS UNION IN THIS MATTER. ON MARCH 3RD, 1967, MR. DALLORTO  
ATTENDED AT THE HOME OF MRS. SPENCE AT ABOUT NOON HOUR. MRS. SPENCE'S  
HUSBAND ANSWERED THE DOOR TO MR. DALLORTO AND SUMMONED HIS WIFE TO THE  
DOOR AT MR. DALLORTO'S REQUEST. MR. SPENCE, HOWEVER, DID NOT PERSON-  
ALLY WITNESS THE TRANSACTION BETWEEN MR. DALLORTO AND MRS. SPENCE.

5. AFTER CONSIDERABLE DISCUSSION ABOUT THE MERITS OF THE UNION,  
MRS. SPENCE SIGNED A MEMBERSHIP CARD. MRS. SPENCE SIGNED THE APPLICA-  
TION CARD AND THE ACKNOWLEDGMENT OF PAYMENT ON THE RECEIPT PORTION  
ATTACHED TO THE CARD AT MR. DALLORTO'S REQUEST. MR. DALLORTO ALSO  
SIGNED THE RECEIPT PORTION OF THE CARD WHEREBY HE ACKNOWLEDGED THAT  
HE HAD COLLECTED \$1.00 FROM MRS. SPENCE. MR. DALLORTO ALSO LEFT WITH  
MRS. SPENCE A RECEIPT SIGNED BY HIM AND COUNTERSIGNED BY MRS. SPENCE.  
ALL SIGNATURES WERE AFFIXED TO THE DOCUMENTS ON MARCH 3RD, 1967, THE  
DATE WHICH APPEARS ON THE CARD AND THE RECEIPT.

6. MRS. SPENCE TESTIFIED THAT SHE HAD NO MONEY ON MARCH 3RD, 1967.  
HOWEVER, SHE AGREED TO PAY \$1.00 INITIATION FEE ON HER PAY DAY THE FOLLOW-  
ING WEEK AND MR. DALLORTO AGREED TO RETURN AND COLLECT THE MONEY. MRS.  
SPENCE FURTHER TESTIFIED THAT MR. DALLORTO NEVER RETURNED TO COLLECT THE  
MONEY ALTHOUGH SHE HAD INTENDED TO PAY AND HAD SET THE MONEY ASIDE FOR HIM.  
WHEN MR. DALLORTO FAILED TO RETURN SHE SPENT THE MONEY. SHE TESTIFIED THAT  
SHE NEVER SAW MR. DALLORTO AGAIN AND AT NO TIME PAID ANY MONEY TO MR.

DALLORTO OR TO ANY OTHER PERSON AS INITIATION FEE FOR THE TEXTILE WORKERS UNION OF AMERICA.

7. Mr. DALLORTO TESTIFIED THAT AFTER MRS. SPENCE HAD SIGNED THE CARD SHE WENT UPSTAIRS TO ATTEMPT TO OBTAIN \$1.00 FROM HER HUSBAND FOR THE INITIATION FEE. HOWEVER, ACCORDING TO Mr. DALLORTO, SHE RETURNED TO ADVISE THAT SHE HAD NO MONEY. SHE TOLD Mr. DALLORTO THAT SHE WOULD PAY HIM LATER AND Mr. DALLORTO ACKNOWLEDGED THAT HE HAD LEFT THE RECEIPT WITH HER BUT TESTIFIED THAT HE HAD RETURNED ABOUT ONE WEEK LATER AND HAD COLLECTED THE \$1.00 FROM HER.

8. WHEN Mr. DALLORTO WAS EXAMINED BY THE BOARD, HE TESTIFIED THAT DURING THIS CAMPAIGN HE HAD ALWAYS RECEIVED \$1.00 AS INITIATION FEE AT THE TIME THE CARD WAS SIGNED IN ACCORDANCE WITH HIS INSTRUCTIONS FROM SENIOR UNION OFFICIALS. SUBSEQUENTLY, WHEN EXAMINED BY COUNSEL FOR THE TEXTILE WORKERS UNION OF AMERICA, HE STATED THAT THERE WERE TWO OR THREE OCCASIONS WHEN HE HAD OBTAINED SIGNED CARDS BUT DID NOT COLLECT \$1.00 FOR INITIATION FEE. HE TESTIFIED THAT THESE TWO OR THREE CARDS WERE NOT FILED WITH THE BOARD AND WERE NOT INCLUDED FOR THE PURPOSE OF THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8), WHICH HE SIGNED.

9. Mr. SPENCE WAS CALLED AS A WITNESS BY THE CANADIAN TEXTILE COUNCIL AND HE VERIFIED THE TESTIMONY OF BOTH Mr. DALLORTO AND MRS. SPENCE THAT HE HAD ANSWERED THE DOOR ON MARCH 3RD, 1967 AND HAD CALLED MRS. SPENCE TO THE DOOR. Mr. SPENCE TESTIFIED, HOWEVER, THAT MRS. SPENCE DID NOT COME UPSTAIRS AND ASK HIM FOR ANY MONEY DURING THE TIME THAT Mr. DALLORTO WAS AT THEIR HOME. Mr. SPENCE ALSO TESTIFIED THAT BECAUSE HE HAD BEEN LAID OFF DURING THE PERIOD IN QUESTION HE WAS USUALLY AT HOME AND THAT Mr. DALLORTO HAD NEVER RETURNED TO COLLECT ANY MONEY TO HIS KNOWLEDGE.

10. IN NON-PAY CASES WHERE THE BOARD IS FACED WITH DIAMETRICALLY OPPOSED STORIES AND CREDIBILITY IS THE ONLY ISSUE, IF THERE IS NOTHING TO CHOOSE BETWEEN THE EVIDENCE OF THE COLLECTOR AND THE PERSON WHO IS CLAIMED AS A MEMBER SO THAT CREDIBILITY CAN BE PROPERLY ASSESSED, EFFECT IS USUALLY GIVEN TO THE SIGNED STATEMENT APPEARING ON THE MEMBERSHIP AND RECEIPT CARD IN WHICH PAYMENT IS ACKNOWLEDGED AND THE BOARD USUALLY ACCEPTS SUCH EVIDENCE IN THESE CIRCUMSTANCES AND FINDS THAT THE MEMBERSHIP EVIDENCE OF THE UNION IS NOT CAST IN DOUBT. SUCH IS NOT THE SITUATION IN THE INSTANT CASE HOWEVER. IN THIS CASE, BOTH Mr. DALLORTO AND MRS. SPENCE AGREED THAT NO MONEY WAS PAID AT THE TIME THE APPLICATION CARD AND THE RECEIPT WAS SIGNED. IN LIGHT OF THIS EVIDENCE, THERE IS AN OBVIOUS UNTRUTH CONTAINED ON THE FACE OF THE DOCUMENT SUBMITTED TO THE BOARD. THE CARD, ON ITS FACE, INDICATES THAT THE MONEY WAS PAID ON MARCH 3RD, 1967. THIS FALSEHOOD WAS KNOWN TO Mr. DALLORTO. HOWEVER, Mr. DALLORTO FAILED TO MAKE FULL DISCLOSURE OF THIS FACT IN FORM 8.

11. IN ADDITION, THERE IS A VERY IMPORTANT DISCREPANCY IN Mr. DALLORTO'S EVIDENCE WITH RESPECT TO HIS PRACTICE OF COLLECTING \$1.00 AT THE TIME THE CARDS WERE SIGNED. AFTER MAKING AN AFFIRMATIVE STATEMENT IN THIS REGARD, HE SUBSEQUENTLY TESTIFIED THAT THERE WERE TWO OR

THREE CASES WHERE HE HAD NOT COLLECTED THE \$1.00 AT THE TIME OF SIGNING OR AT ANY OTHER TIME.

12. THE PRACTICE OF SIGNING CARDS IN THE MANNER FOLLOWED IN THE CASE OF MRS. SPENCE IS OBVIOUSLY A DANGEROUS PRACTICE AND IS OPEN TO ABUSE AND ERROR. A UNION REPRESENTATIVE WHO ENGAGES IN SUCH PRACTICE RUNS A GREAT RISK. IN A PROLONGED CAMPAIGN INVOLVING A LARGE NUMBER OF PEOPLE, THE MEMORY OF THE COLLECTOR IS NOT ALWAYS RELIABLE FOR THE PURPOSE OF COMPLETING FORM 8 OR FOR THE PURPOSE OF TESTIFYING CONCERNING THE CIRCUMSTANCES IN WHICH A CARD WAS SIGNED AND THE INITIATION FEE PAID. WHERE A COLLECTOR ENGAGES IN THE PRACTICE OF SIGNING AND DATING MEMBERSHIP CARDS WITHOUT COLLECTING MONEY AT THE TIME OF SIGNING, HE RUNS THE RISK OF HAVING HIS PRACTICE CHALLENGED. SINCE HIS MEMORY IS NOT INFALLIBLE, THE DANGEROUS PRACTICE IS VERY SUSPECT AND HIS DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IS UNRELIABLE UNLESS FULL DISCLOSURE OF ALL FACTS IS MADE.

13. IN VIEW OF THE DANGEROUS PRACTICES FOLLOWED BY MR. DALLORTO IN SIGNING UNION MEMBERS AND THE FACT THAT HE WAS A PAID UNION OFFICIAL IN CHARGE OF THE CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES, AND HAVING REGARD FOR THE FACT THAT THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE, AND SINCE THERE WAS UNDISCLOSED INACCURACIES AND ALSO DISCREPANCIES CONTAINED IN THE EVIDENCE OF MR. DALLORTO, THE BOARD PREFERS THE EVIDENCE OF MRS. SPENCE WHERE HER EVIDENCE IS NOT IN AGREEMENT WITH THE EVIDENCE OF MR. DALLORTO. WE THEREFORE FIND THAT MRS. SPENCE DID NOT PAY \$1.00 ON ACCOUNT OF INITIATION FEE AS CLAIMED BY THE TEXTILE WORKERS UNION OF AMERICA. SINCE MR. DALLORTO IS A PAID UNION OFFICIAL, WE FIND THAT THE NON-PAY IN SUCH CIRCUMSTANCES IS FATAL TO THE APPLICATION FOR CERTIFICATION OF THE TEXTILE WORKERS UNION OF AMERICA IN THIS CASE AND THE APPLICATION OF THE TEXTILE WORKERS UNION OF AMERICA IS THEREFORE DISMISSED.

14. LEST WE BE MISUNDERSTOOD, WE WISH TO POINT OUT THAT IF WE HAD FOUND THAT MRS. SPENCE HAD SUBSEQUENTLY PAID \$1.00 AFTER MARCH 3RD, 1967, THE FACT THAT THE RECEIPT IS DATED MARCH 3RD, 1967 WOULD NOT OF ITSELF BE NECESSARILY FATAL TO THE APPLICATION. SINCE SUCH FACTS SHOULD NORMALLY BE DISCLOSED IN FORM 8, THEIR NON-DISCLOSURE CASTS DOUBT UPON THE RELIABILITY OF OTHER EVIDENCE OF THE UNION CONCERNING CHALLENGED CARDS. IN THIS CASE, WE HAD THE ADDITIONAL DISCREPANCIES APPEARING IN MR. DALLORTO'S EVIDENCE WHICH CONTRIBUTED GREATLY TO THE FINAL RESULT.

15. THE RESPONDENT IN THIS CASE FILED A REPLY (FORM 9) WHEREIN THE RESPONDENT FAILED TO COMPLETE ITEMS 3, 4 AND 6. THE MANDATORY REQUIREMENT CONTAINED IN SECTION 7 OF THE BOARD'S RULES OF PROCEDURE REQUIRING A RESPONDENT TO FILE A REPLY IN QUADRUPPLICATE IN FORM 9 IS NOT SATISFIED UNLESS ALL ITEMS IN FORM 9 ARE COMPLETED BY THE RESPONDENT IN SO FAR AS IS REASONABLY POSSIBLE IN THE CIRCUMSTANCES.



16. THE BOARD THEREFORE FINDS THAT THE CANADIAN TEXTILE COUNCIL IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

17. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STATIONARY ENGINEERS COVERED BY THE BOARD'S CERTIFICATE IN FAVOUR OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS DATED NOVEMBER 9, 1965, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

18. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 2ND, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

20. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE CANADIAN TEXTILE COUNCIL.

21. MR. R. A. WOOLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF PERSONS CLASSIFIED BY THE RESPONDENT AS ASSISTANT FOREMEN, LINE SUPERVISORS AND CLERKS.

22. THE BOARD DIRECTS THAT ASSISTANT FOREMEN, LINE SUPERVISORS AND CLERKS BE PERMITTED TO VOTE AND THEIR BALLOTS SHALL BE SEGREGATED AND NOT COUNTED PENDING A RULING BY THE BOARD AS TO THEIR ELIGIBILITY FOR INCLUSION IN THE BARGAINING UNIT.

23. THE MATTER IS REFERRED TO THE REGISTRAR.

13794-67-R: THE METHODS, WAGE RATE AND SENIOR COST TECHNICIANS' ASSOCIATION OF ONTARIO, LOCAL 166, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. TRANE COMPANY OF CANADA, LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD:

DECEMBER 28, 1967.

2. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER IN THIS MATTER DATED NOVEMBER 29TH, 1967.

3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES COMPOSED OF ALL THE QUALITY CONTROL TECHNICIANS IN THE EMPLOY OF THE COMPANY IN METROPOLITAN TORONTO, SAVE AND EXCEPT QUALITY CONTROL MANAGER AND PERSONS ABOVE THE RANK OF QUALITY CONTROL MANAGER.

4. AN APPLICANT WHICH SEEKS TO BRING ITSELF WITHIN THE MANDATORY PROVISIONS OF SUBSECTION 2 OF SECTION 6 OF THE LABOUR RELATIONS ACT MUST ESTABLISH THREE THINGS: (1) THAT THE EMPLOYEES FOR WHOM IT IS SEEKING TO REPRESENT ARE EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES; (2) THAT THEY COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT; AND (3) THAT THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT. AT THE HEARING, THE APPLICANT SUBMITTED THAT THE FIVE EMPLOYEES CLASSIFIED AS QUALITY CONTROL MEN CONSTITUTE AN APPROPRIATE CRAFT UNIT. THE RESPONDENT CONTENDED THAT THE APPLICANT HAS NOT MET THE REQUIREMENTS OF SECTION 6(2) OF THE ACT.

5. THERE IS NO EVIDENCE THAT QUALITY CONTROL MEN COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES NOR IS THERE A HISTORY OF THE APPLICANT ACTING AS BARGAINING AGENT FOR SUCH A GROUP OF EMPLOYEES. THE APPLICANT AT THE HEARING REFERRED TO A CERTIFICATE GRANTED TO IT BY THIS BOARD FOR A UNIT OF INSPECTORS IN THE JAMES HOWDEN AND PARSONS CASE, BOARD FILE NO. 11955-66-R. IT IS TO BE NOTED, HOWEVER, THAT THE APPLICANT SUBMITTED IN THAT CASE THAT THE UNIT FOR WHICH IT APPLIED WAS AN APPROPRIATE TAG-END UNIT. THE EVIDENCE IN THE INSTANT CASE DOES NOT SUPPORT A FINDING THAT QUALITY CONTROL MEN ARE DISTINGUISHABLE FROM OTHER EMPLOYEES SO AS TO CONSTITUTE A CRAFT UNIT WITHIN THE MEANING OF SECTION 6(2) OF THE ACT.

6. IN APPLYING THE PROVISIONS OF SECTION 6(1) OF THE ACT, IT WOULD APPEAR FROM THE EVIDENCE THAT THE QUALITY CONTROL MEN HAVE A STRONGER COMMUNITY OF INTEREST WITH THE OFFICE AND CLERICAL STAFF THAN WITH THE PLANT EMPLOYEES. IN THE CIRCUMSTANCES, THEY CANNOT BE CONSIDERED AS AN APPROPRIATE TAG-END UNIT OF PLANT EMPLOYEES BUT RATHER SHOULD BE INCLUDED IN A BARGAINING UNIT OF OFFICE AND CLERICAL EMPLOYEES.

7. THE BOARD, THEREFORE, IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN 45% OF THE EMPLOYEES OF THE RESPONDENT IN A BARGAINING UNIT COMPRISING OF OFFICE AND CLERICAL EMPLOYEES AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER

6TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE ACT.

8. THE REPORT OF THE EXAMINER INDICATED THAT THE PARTIES HAD AGREED THAT "THE PERSONS CLASSIFIED BY THE RESPONDENT AS QUALITY CONTROL MEN ARE APPROPRIATE FOR INCLUSION IN THE UNIT REPRESENTED BY THE APPLICANT". WHILE THE BOARD AS A GENERAL POLICY ENCOURAGES CO-OPERATION OF PARTIES TO SOLVE THEIR OWN DIFFERENCES, IT SHOULD BE NOTED, HOWEVER, THAT IT IS NOT THE BOARD'S PRACTICE TO ACQUIEISE IN ANY AGREEMENT OF THE PARTIES WHICH WOULD DO VIOLENCE TO GENERAL BOARD POLICY OR BE INCONSISTENT WITH THE REQUIREMENTS OF THE ACT. THE BOARD LOOKS AT ALL THE CIRCUMSTANCES IN EACH CASE IN CONSIDERING WHETHER OR NOT IT WILL APPROVE SUCH AN AGREEMENT. FOR REFERENCE IN THIS REGARD SEE FONTHILL LUMBER LIMITED CASE, 64 CLLO, 916,305 IN WHICH THE BOARD STATES AT P. 1260:

IT IS, OF COURSE, OPEN TO THE PARTIES, IF THEY WISH TO NEGOTIATE A COLLECTIVE AGREEMENT EMBODYING A DIFFERENT BARGAINING UNIT OF EMPLOYEES FROM WHAT THE BOARD ITSELF MIGHT FIND OR HAS IN FACT FOUND TO CONSTITUTE AN APPROPRIATE UNIT.

9. THE APPLICATION IS ACCORDINGLY DISMISSED.

13888-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. ROXALIN OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: EARL J. CALANDRO, PAT V. GLASSO, AND  
ROD BARRETT FOR THE APPLICANT, W. GIBSON GRAY, Q.C., AND  
J. PERRY BORDEN FOR THE RESPONDENT, AND THOMAS FALCONER FOR  
THE GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
P. J. O'KEEFFE. DECEMBER 14, 1967.

. . .

2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. THERE WAS FILED IN OPPOSITION TO THE APPLICATION A STATEMENT OF DESIRE OR PETITION SIGNED BY 24 EMPLOYEES OF THE RESPONDENT. THERE ARE 31 PERSONS IN THE BARGAINING UNIT. THE UNION FILED AS EVIDENCE OF MEMBERSHIP 18 CARDS, WHICH STOOD UP. THE PETITION CONTAINED AN OVERLAP OF 13; THAT IS TO SAY, 13 OF THE PERSONS WHO SIGNED THE PETITION HAD ALSO

SIGNED MEMBERSHIP CARDS. IT THEREFORE BECAME NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGINATION AND CIRCULATION OF THE PETITION, AND THE MANNER IN WHICH THE SIGNATURES THERETO HAD BEEN OBTAINED.

4. EVIDENCE IN SUPPORT OF THE PETITION WAS GIVEN BY THOMAS FALCONER, A SHIPPING-ROOM EMPLOYEE OF THE RESPONDENT. MR. FALCONER BECAME AWARE OF THE ORGANIZING ACTIVITIES OF THE UNION ON OR AROUND THE 9TH OF NOVEMBER, 1967, AND TOOK QUITE AN ENERGETIC PART IN OPPOSING THE UNION FROM THAT DATE ONWARD.

5. FOLLOWING THE POSTING OF THE BOARD'S FORM 5, REFERRED TO AS "THE GREEN NOTICE", THERE WAS A UNION MEETING CALLED AT WHICH FALCONER ATTENDED FOR THE PURPOSE OF OPPOSING THE UNION. AFTER THE MEETING, HE DRAFTED THE HEADING FOR THE PETITION AND GAVE IT TO A CLERK EMPLOYEE, WHO TYPED IT FOR HIM. NO REFERENCE WAS MADE TO MANAGEMENT FOR PERMISSION TO HAVE THE TYPING DONE. FALCONER THEN PROCEEDED TO TAKE THE PETITION THROUGH THE PLANT ON THE AFTERNOON OF THE 16TH OF NOVEMBER, 1967. HE DID NOT SEEK PERMISSION FROM ANYBODY IN MANAGEMENT TO LEAVE HIS POST IN ORDER TO TALK TO THE EMPLOYEES, BUT APPARENTLY WENT FORWARD WITHOUT HINDRANCE TO VISIT THE 24 SIGNATORIES AT THEIR WORK STATIONS DURING THEIR WORKING HOURS FOR THE PURPOSE OF HAVING THEM SIGN THE PETITION. BOTH MR. FALCONER AND THE TWO WITNESSES CALLED BY THE APPLICANT STATED THAT THERE WERE NO FOREMEN AROUND THE PLANT DURING THE PERIOD WHEN THE PETITION WAS BEING CIRCULATED. THE TIME CONSUMED WAS ESTIMATED TO HAVE BEEN FROM LUNCH TIME UNTIL 4:30 P.M. - VIRTUALLY THE WHOLE AFTER-NOON.

6. EVIDENCE WAS GIVEN BY MR. BURKE THAT, WHEN FALCONER APPROACHED HIM TO SIGN THE PETITION, HE TOLD BURKE THAT HE WAS TAKING THE PETITION IN TO MANAGEMENT AND THAT HE WOULD TRY TO GET A LETTER FROM MANAGEMENT QUARANTEEING THE JOBS OF THOSE WHO SIGNED THE PETITION. MR. PHILLIPS, WHO WAS CALLED BY THE APPLICANT, TESTIFIED THAT FALCONER HAD SPOKEN IN SIMILAR VEIN TO HIM WHEN HE SOUGHT TO HAVE HIM SIGN THE PETITION.

7. WE HAVE NO DOUBT THAT FALCONER'S ACTIVITIES IN OPPOSITION TO THE UNION WAS PRIMARILY A PERSONAL MATTER MOTIVATED BY HIS PRIVATE OPINIONS. WE ARE QUITE SURE HE BELIEVED THAT, ARMED WITH THE PETITION, HE COULD GET A GUARANTEE OF SECURITY OF JOBS FROM THE COMPANY FOR THOSE WHO SIGNED. HOWEVER, IN INDICATING TO EMPLOYEES WHOSE SIGNATURES HE SOUGHT THAT HE WOULD USE THE PETITION IN APPROACHING MANAGEMENT, WE ARE OF THE OPINION THAT HE INADVERTENTLY, BUT NONETHELESS EFFECTIVELY, DESTROYED THE VALUE OF THE DOCUMENT AS EVIDENCE OF THE VOLUNTARY WISHES OF THE EMPLOYEES WHO SIGNED IT.

8. IN VIEW OF THE PROPOSAL FALCONER ADVANCED IT WOULD BE EXTREMELY DIFFICULT FOR AN EMPLOYEE TO REFUSE TO SIGN, KNOWING THAT SUCH REFUSAL TO OPPOSE THE UNION WOULD COME TO THE ATTENTION OF MANAGEMENT IF FALCONER'S SCHEME WERE CARRIED FORWARD.



9. HAVING REGARD TO THE FOREGOING, THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

10. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

11. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY STAFF, SALES AND OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED IN THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 21ST, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

DECEMBER 14, 1967.

1. I DISSENT.

2. THIS IS AN APPLICATION FOR CERTIFICATION. THERE WERE 31 EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF APPLICATION; AND 18 OF THESE WERE MEMBERS OF THE APPLICANT UNION ON THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE ACT. THIS IS EXACTLY THE MINIMUM NUMBER OF MEMBERS REQUIRED FOR OUT-RIGHT CERTIFICATION; I.E., OVER 55 PER CENT OF THE 31 EMPLOYEES IN THE BARGAINING UNIT.

3. TWENTY-FOUR (24) EMPLOYEES IN THE BARGAINING UNIT SIGNED A PETITION IN OPPOSITION TO THE APPLICATION. OF THIS NUMBER, 13 WERE MEMBERS OF THE APPLICANT UNION. CONSEQUENTLY, IF WEIGHT IS GIVEN TO ONE OR MORE OF THESE 13 NAMES ON THE PETITION, THE UNION WOULD BE REDUCED TO A VOTE POSITION; I.E., IT WOULD NOT HAVE MORE THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS UNCHALLENGED MEMBERS. THE ISSUE BEFORE THE BOARD, THEREFORE, IS WHETHER OR NOT WEIGHT SHOULD BE GIVEN TO ONE OR MORE OF THE 13 NAMES ON THE PETITION REFERRED TO ABOVE. THIS DOCUMENT WAS ADDRESSED TO THE BOARD AND READ AS FOLLOWS:

"DEAR SIRs:

RE - BARGAINING RIGHTS BETWEEN THE INTERNATIONAL  
UNION OF DISTRICT 50 UMWA AND ROXALIN OF CANADA  
LTD.

WE THE UNDERSIGNED EMPLOYEES OF ROXALIN OF CANADA  
LTD. AFTER GIVING DUE CONSIDERATION TO THE ABOVE  
MENTIONED UNION, AS BARGAINING AGENTS FOR OUR WELFARE,  
NOW FIND THAT WE ARE CAPABLE OF HANDLING SAME ON OUR  
OWN BEHALF."

4. THOMAS FALCONER, AN EMPLOYEE IN THE SHIPPING DEPARTMENT, GAVE EVIDENCE AS TO THE ORIGINATION, PREPARATION, AND CIRCULATION OF THE PETITION IN OPPOSITION TO THIS APPLICATION. HE GAVE HIS EVIDENCE IN A STRAIGHTFORWARD AND CANDID MANNER. HIS DEMEANOUR SHOWED THAT HE WAS VERY SINCERE AND GENUINELY UPSET THAT THERE WAS A POSSIBILITY OF A UNION COMING INTO THE PLANT. HE ADMITTED TELLING EMPLOYEES THAT HE WOULD GO TO MANAGEMENT AND TRY TO OBTAIN JOB SECURITY FOR THOSE WHO SIGNED THE PETITION. APPARENTLY, HE WAS HOLDING OUT AN INDUCEMENT TO THE EMPLOYEES TO SIGN THE PETITION IN THE SAME WAY UNIONS MAKE GENEROUS PROMISES TO GET THEM TO BECOME MEMBERS OF THE UNION. MOREOVER, EACH EMPLOYEE WHO SIGNED THE PETITION GAVE HIM PERMISSION TO DISCLOSE HIS IDENTITY TO OTHER EMPLOYEES WHOM HE SOLICITED. FALCONER ALSO STATED THAT THE FOREMAN STOPPED HIM FROM CIRCULATING THE PETITION IN THE PLANT AS SOON AS HE BECAME AWARE OF IT.

5. BOTH UNION WITNESSES, LEO BURKE AND ARTHUR PHILLIPS, EMPLOYEES OF THE RESPONDENT, STATED UNDER OATH, WITHOUT QUALIFICATION, THAT THEY WERE NOT INTIMIDATED OR COERCED BY MANAGEMENT CONCERNING THEIR UNION ACTIVITY. ON THE BASIS OF THE EVIDENCE BEFORE IT, THE BOARD RULED AT THE HEARING THAT THE APPLICANT UNION HAD FAILED TO SUBSTANTIATE ITS CHARGES "THAT COERCION, INTIMIDATION, AND IMPLIED THREATS WERE USED IN OBTAINING CERTAIN SIGNATURES" ON THE PETITION.

6. IN AN ORGANIZATIONAL CAMPAIGN CONDUCTED UNDER THE CIRCUMSTANCES SET OUT IN PARAGRAPHS 4 AND 5 ABOVE, IT IS MOST UNLIKELY THAT THE EMPLOYEES FEARED THE COMPANY WOULD TAKE REPRISALS AGAINST THEM IF THEY DID NOT SIGN THE PETITION. IN FACT, NOT ONE EMPLOYEE HAS COMPLAINED IN ANY MANNER WHATSOEVER OR DIRECTLY OR INDIRECTLY INFORMED THE BOARD THAT HE SIGNED THE PETITION EVEN IN THE SHADOW OF SUCH A FEAR. IN THE SALVATION ARMY GRACE HOSPITAL CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER, 1965, P. 539, THE BOARD ATTACHED CONSIDERABLE WEIGHT TO THE FACT THAT NO EMPLOYEES HAD COMPLAINED TO IT IN RESPECT OF THE ACTIONS OF THE OTHER PARTIES. CONSEQUENTLY, WITH NO EVIDENCE TO THE CONTRARY, I MUST FIND THAT, IN THE INSTANT CASE, THE SIGNATURES ON THE PETITION REPRESENT A VOLUNTARY SIGNIFICATION BY THE EMPLOYEES WHO SIGNED IT THAT THEY DO NOT WISH THE APPLICANT UNION TO REPRESENT THEM.

7. FOR THESE REASONS, I WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED A REPRESENTATION VOTE BY SECRET BALLOT. THE EMPLOYEES WOULD HAVE BEEN ASKED IF THEY WISHED TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH THE APPLICANT UNION.

13892-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CITY OF OTTAWA PUBLIC SCHOOL BOARD (RESPONDENT) V. THE OTTAWA PUBLIC SCHOOL BOARD MAINTENANCE STAFF ASSOCIATION (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: W. A. ACTON FOR THE APPLICANT, JOHN D. RICHARD, GORDON HARAM AND JOHN EWART FOR THE RESPONDENT, AND A. C. BUTLER, Q.C., FOR THE INTERVENER.

DECISION OF J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: DECEMBER 18, 1967.

. . .

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, AND TO THE HISTORY AND RELATIONSHIP BETWEEN THE RESPONDENT AND ITS EMPLOYEES, THE BOARD FINDS THAT ALL MAINTENANCE STAFF, BUS DRIVERS AND MECHANICS IN THE EMPLOY OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT CERTAIN PERSONS CLASSIFIED AS WORKING FOREMEN DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM "MAINTENANCE STAFF", AS IT IS USED IN THE DESCRIPTION OF THE BARGAINING UNIT, DOES NOT INCLUDE CARETAKERS, CLEANERS, CHARWOMEN, CLERK OF SUPPLIES OR STOCK-KEEPERS.

5. THE LIST OF PERSONS COMING WITHIN THE BARGAINING UNIT FURNISHED BY THE RESPONDENT CONTAINED 96 NAMES. ONE OF THESE, SET OUT IN SCHEDULE "D", IS THAT OF A PERSON WHO LAST WORKED WITHIN THIRTY DAYS OF THE DATE OF THE MAKING OF THE APPLICATION, BUT WHO WAS NOT EXPECTED TO RETURN WITHIN THIRTY DAYS FOLLOWING THAT DATE. IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE, THIS PERSON WOULD NOT BE CONSIDERED TO BE AN EMPLOYEE OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION, AND HE WOULD NOT, THEREFORE, BE INCLUDED IN THE LIST OF EMPLOYEES IN THE BARGAINING UNIT ON THAT DATE. THE APPLICANT HAS REQUESTED THE BOARD TO INCLUDE THIS PERSON ON THE LIST, HOWEVER, ON THE GROUND THAT THE FACT OF HIS MEMBERSHIP IN THE TRADE UNION HAS BEEN REVEALED, INASMUCH AS THE APPLICANT FILED MEMBERSHIP CARDS IN RESPECT OF 53 PERSONS AND YET, AS THE RESULT OF THE REMOVAL OF ONE NAME FROM THE LIST OF EMPLOYEES, IS NOT ENTITLED TO CERTIFICA-

TION, BUT ONLY TO PARTICIPATE IN A REPRESENTATION VOTE. THE "LOST CARD" AND THE NAME REMOVED, OF COURSE, COINCIDE.

6. IT MAY BE THAT IN SOME SITUATIONS THE FACT OF A PERSON'S UNION MEMBERSHIP MAY BE DISCLOSED. SECTION 83 OF THE LABOUR RELATIONS ACT, TO WHICH THE APPLICANT HAS REFERRED EXPRESSES THE POLICY OF KEEPING SUCH INFORMATION SECRET, AND IT IS ONLY WHERE IT IS NECESSARY TO DO SO THAT THE BOARD WOULD PERMIT SUCH DISCLOSURE. IN SOME CIRCUMSTANCES, SUCH AS THOSE OF THE INSTANT CASE, THE FACTS ARE SUCH THAT DISCLOSURE IS INEVITABLE. THIS IS NOT THE SORT OF MATTER FOR WHICH ANY "REMEDY" IS AVAILABLE, AND IT IS CLEARLY NOT A REASON WHICH WOULD LEAD THE BOARD TO CONSIDER AS AN EMPLOYEE, A PERSON WHO, ON THE USUAL TEST, IS NOT AN EMPLOYEE OF THE RESPONDENT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 22ND, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77 (2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: DECEMBER 18, 1967.

I DISSENT.

I WOULD HAVE FOUND THAT THE BARGAINING UNIT PROPOSED BY THE RESPECTIVE PARTIES, AND ADOPTED BY THE MAJORITY OF THE BOARD, WAS NOT APPROPRIATE FOR COLLECTIVE BARGAINING, AND THAT THE APPROPRIATE BARGAINING UNIT SHOULD HAVE ENCOMPASSED "ALL EMPLOYEES" WITH THE EXCEPTION OF THE USUAL OFFICE AND MANAGERIAL CLASSIFICATIONS.

IN SUPPORT OF MY POSITION, I QUOTE VERBATIM BOARD PRACTICE NOTE #10, DATED OCTOBER 12, 1966:

1. THE ATTENTION OF TRADE UNIONS AND EMPLOYERS IS DIRECTED TO THE FOLLOWING EXCERPT FROM THE BOARD'S DECISION IN THE BROCK DISTRICT HIGH SCHOOL BOARD CASE, SEPTEMBER 23, 1966, WHICH SETS OUT THE BOARD'S POLICY AS TO THE



TERMS IN WHICH IT IS INCLINED TO DEFINE BARGAINING UNITS OF EMPLOYEES OF SCHOOL BOARDS AND BOARDS OF EDUCATION IN FUTURE CASES. IN THAT DECISION THE BOARD SAID IN PART AS FOLLOWS:

IN APPLICATIONS FOR CERTIFICATION COVERING EMPLOYEES OF SCHOOL BOARDS AND BOARDS OF EDUCATION THERE HAVE BEEN DIFFERENCES IN THE PAST AS TO THE MANNER IN WHICH THE BOARD HAS DESCRIBED THE UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. IN SOME INSTANCES THE UNIT HAS BEEN DESCRIBED IN TERMS OF EMPLOYEES ENGAGED IN CARETAKING AND MAINTENANCE AND IN OTHER INSTANCES THE UNIT HAS BEEN DESCRIBED SO AS TO ENCOMPASS ALL EMPLOYEES. THE BOARD IS INCLINED TOWARD THE VIEW, HOWEVER, THAT THE LATTER IS THE MORE APPROPRIATE DESCRIPTION. (EMPHASIS ADDED)

13906-67-R: DENTAL TECHNICIANS UNION, LOCAL 43 (APPLICANT) V. AESTHETIC BRIDGEWORK LABORATORY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: A. RIVERA AND L. H. ROSEN FOR THE APPLICANT, ZOLTAN HAYDU FOR THE RESPONDENT, AND THOMAS ALLAN ROTH AND ISTVAN POLGAR FOR THE GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER  
E. BOYER: DECEMBER 4, 1967.

1. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE OR PETITION SIGNED BY ALL OF THE EMPLOYEES OF THE RESPONDENT. SINCE ALL OF THE EMPLOYEES WERE ALSO CLAIMED AS MEMBERS BY THE APPLICANT, IT BECAME NECESSARY FOR THE BOARD TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED.

2. THOMAS ROTH, AN EMPLOYEE OF THE RESPONDENT, GAVE EVIDENCE WITH RESPECT TO THE PETITION. HE TESTIFIED THAT THE EMPLOYEES CONCERNED HELD A MEETING ON THURSDAY, NOVEMBER 23RD, IN THE OFFICE IN WHICH THEY ALL WORK AND DECIDED THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE APPLICANT. THE FOLLOWING DAY MR. ROTH AND OTHERS OF THE EMPLOYEES TOLD MR. HAYDU, THE OWNER OF THE RESPONDENT COMPANY, OF THEIR INTENTION TO WITHDRAWN FROM THE UNION AND REQUESTED HIM TO PERMIT THEM TO HAVE THE OFFICE TYPIST TYPE OUT THE PETITION FOR THEM.

CONSENT WAS GIVEN BY MR. HAYDU, AND THE DOCUMENT WAS TYPED IN THE COMPANY'S OFFICE, WHICH, INCIDENTLY, APPEARS TO BE MORE IN THE NATURE OF A DESK IN A PART OF THE LABORATORY RATHER THAN AN ENCLOSED OFFICE. THE PETITION WAS THEN SIGNED BY SOME OF THE EMPLOYEES IN THAT PART OF THE PREMISES KNOWN AS THE OFFICE, AND BY THE REMAINDER OF THE EMPLOYEES IN THE OTHER PART OF THE LABORATORY. MR. HAYDU WAS PRESENT DURING THE SIGNING OF THE DOCUMENT. THE PETITION WAS THEN GIVEN TO THE TYPIST, WHO ADDRESSED THE ENVELOPE AND MAILED IT TO THE BOARD BY REGISTERED MAIL.'

3. IN VIEW OF THE FACT THAT MANAGERIAL ASSISTANCE WAS OBTAINED IN THE PREPARATION OF THE PETITION, TOGETHER WITH THE MORE SIGNIFICANT FACT THAT IT WAS SIGNED IN THE PRESENCE OF MR. HAYDU, THE OWNER OF THE RESPONDENT COMPANY, THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL DENTAL TECHNICIANS EMPLOYED BY THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT LABORATORY FOREMAN AND PERSONS ABOVE THE RANK OF LABORATORY FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 24TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER R. W. TEAGLE: DECEMBER 4, 1967.

1. I DISSENT.

2. IN MY OPINION THE PETITION REPRESENTS THE VOLUNTARY AND HONEST WISHES OF THE EMPLOYEES. I WOULD HAVE ORDERED A VOTE.

#### INDEXED ENDORSEMENTS - TERMINATION

13563-67-R: MRS. BEATRICE LEVERE (APPLICANT) V. THE HOTELS CLUBS RESTAURANTS, TAVERNS, EMPLOYEE UNION LOCAL 261 (RESPONDENT).

(RE: BRUCE MACDONALD MOTOR LODGE,  
BELLS CORNER).

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BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS  
D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: BEATRICE LEVERE FOR THE APPLICANT,  
WM. KOWALCHUK FOR THE RESPONDENT, FRANK DELONGIS AND ROGER J.  
BENOIT FOR BRUCE MACDONALD MOTOR LODGE.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER:

DECEMBER 4, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION. AT THE TIME THIS APPLICATION WAS MADE, THERE WAS PENDING BEFORE THE BOARD AN EARLIER APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT FOR THE SAME GROUP OF EMPLOYEES, BECAUSE THIS SUBSEQUENT APPLICATION WAS MADE AFTER THE TERMINAL DATE FIXED FOR THE ORIGINAL APPLICATION, CONSIDERATION OF THE INSTANT APPLICATION WAS POSTPONED PURSUANT TO THE PROVISIONS OF SECTION 77(3)(B) OF THE LABOUR RELATIONS ACT UNTIL A FINAL DECISION WAS ISSUED IN THE ORIGINAL APPLICATION. THE ORIGINAL APPLICATION HAVING BEEN DISMISSED, THE INSTANT APPLICATION WAS PROCESSED AND CAME ON FOR HEARING.

2. THE APPLICANT FILED A TYPEWRITTEN COPY OF APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS (FORM 13) WHICH SHE HAD FILLED IN BY HAND. SHE ALSO FILED WITH HER APPLICATION A TYPEWRITTEN STATEMENT OF DESIRE SIGNED BY SIXTEEN PERSONS. THE APPLICANT WAS PRESENT WHEN FOURTEEN OF THESE PERSONS SIGNED THE STATEMENT OF DESIRE, IN ADDITION, THERE WAS FILED, PRIOR TO THE TERMINAL DATE OF THIS APPLICATION, A SECOND STATEMENT OF DESIRE SIGNED BY TWO ADDITIONAL PERSONS WHO PURPORTED TO BE EMPLOYEES OF THE COMPANY. THE APPLICANT WAS UNABLE TO ADDUCE ANY EVIDENCE AS TO THE ORIGINATION OF THE SECOND STATEMENT OF DESIRE OR EVIDENCE AS TO THE MANNER IN WHICH IT CAME TO BE SIGNED.

3. THE ONLY EVIDENCE ADDUCED BY THE APPLICANT AS TO THE ORIGINATION OF THE TYPED APPLICATION FORM AND THE FIRST TYPED STATEMENT OF DESIRE WAS TO THE EFFECT THAT SHE HAD OBTAINED THESE TWO DOCUMENTS FROM MARIO PARADISO, THE PERSON WHO HAD MADE THE ORIGINAL APPLICATION REFERRED TO ABOVE. APPARENTLY, THE EMPLOYEES HAD ANTICIPATED THE DISMISSAL OF THE FIRST APPLICATION AND IT WAS DECIDED TO MAKE THE INSTANT APPLICATION. THE FORMS USED BY THE APPLICANT IN THIS MATTER WERE PROVIDED BY MARIO PARADISO AND WERE COMPLETED BY THE APPLICANT. MARIO PARADISO WAS NOT CALLED TO TESTIFY CONCERNING THE ORIGINATION OF THESE DOCUMENTS OR WHAT ASSISTANCE, IF ANY, WAS RENDERED TO HIM BY MANAGEMENT WITH RESPECT TO THE ORIGINATION OF THE DOCUMENTS. NO MEMBER OF THE DIVISION OF THE BOARD IN THIS CASE WAS A MEMBER OF THE DIVISION OF THE BOARD WHICH HEARD THE ORIGINAL APPLICATION AND WE HAVE NO EVIDENCE BEFORE US WITH RESPECT TO THE ORIGINATION OF THE DOCUMENTS FILED IN THE ORIGINAL APPLICATION.

4. THE DOCUMENTS SUBMITTED IN SUPPORT OF THIS APPLICATION ARE SO CLOSELY CONNECTED WITH AND DEPENDENT UPON THE DOCUMENTS SUBMITTED IN THE ORIGINAL APPLICATION, FROM THE POINT OF VIEW OF THE TIME WHEN THEY ORIGINATED AND THE MANNER IN WHICH THEY WERE PREPARED, THAT WE FIND THAT MARIO PARADISO WAS THE DE FACTO ORIGINATOR OF THE DOCUMENTS. SINCE MR. PARADISO DID NOT TESTIFY IN THIS MATTER CONCERNING THE ORIGINATION OF THE STATEMENTS OF DESIRE FILED IN SUPPORT OF THIS APPLICATION, FOR THE REASONS GIVEN BY THE BOARD IN CHERNEY BROTHERS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, P. 525, WE FIND THAT THE APPLICANT HAS FAILED TO PRODUCE SUFFICIENT EVIDENCE AS TO THE ORIGINATION OF THE DOCUMENTS FILED IN SUPPORT OF THIS APPLICATION. THE APPLICANT HAS THEREFORE NOT SATISFIED THE ONUS UPON HER THAT THE STATEMENTS OF DESIRE REPRESENT A VOLUNTARY SIGNIFICATION BY NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT AND THE APPLICATION MUST ACCORDINGLY FAIL.

5. IN VIEW OF THE RESULT, IT WILL NOT BE NECESSARY FOR THE BOARD TO DEAL WITH THE QUESTION OF THE TIMELINESS OF THIS APPLICATION OR THE QUESTION AS TO THE APPLICABILITY TO THE FACTS OF THIS CASE OF THE PRINCIPLE ENUNCIATED BY THE BOARD IN THE TRINIDAD LEASEHOLDS CASE (1949) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, ¶17,005, D.L.S. 7-2107.

6. THIS APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

DECEMBER 4, 1967.

I DISSENT. ON ALL OF THE EVIDENCE, I WOULD HAVE FOUND THAT THE APPLICANT HAD SATISFIED THE ONUS UPON HER THAT THE STATEMENT OF DESIRE WHICH SHE WAS ABLE TO IDENTIFY REPRESENTED A VOLUNTARY SIGNIFICATION BY NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT. I WOULD HAVE DIRECTED A REPRESENTATION VOTE.

I MAY SAY THAT IF THE EVIDENCE GIVEN BEFORE US AT THE HEARING AS TO THE REPRESENTATION GIVEN TO THESE EMPLOYEES BY THE RESPONDENT IS ACCURATE, THERE IS LITTLE WONDER THAT THE EMPLOYEES DESIRED TO TERMINATE THEIR RELATIONSHIP WITH THE RESPONDENT.

13705-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. NATIONAL PLASTERING COMPANY LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.



APPEARANCES AT HEARING: R. KOSKIE, J. B. WATERMAN AND ANGELO BURIGANA FOR THE APPLICANT, J. A. RYDER FOR THE RESPONDENT, R. D. PERKINS FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 13, 1967.

1. THIS IS AN APPLICATION WHEREIN THE APPLICANT APPLIED TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT FOR CERTAIN EMPLOYEES OF THE INTERVENER PURSUANT TO THE PROVISIONS OF SECTION 45A OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT TRADE UNION REPRESENTS CERTAIN EMPLOYEES OF THE INTERVENER AS OF THE DATE THIS APPLICATION WAS MADE AND HAS APPLIED DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WAS IN OPERATION. FOR THE REASONS GIVEN BY THE BOARD IN THE TORONTO PLASTERING COMPANY LIMITED CASE, BOARD FILE 13707-67-R, THE BOARD DENIED THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT OF THIS APPLICATION AND DENIES THE RESPONDENT'S REQUEST AS CONTAINED IN ITS LETTER DATED OCTOBER 26TH, 1967, WHEREIN THE RESPONDENT REQUESTED THE BOARD TO REVIEW ITS DECISION DENYING THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT.

3. THE APPLICANT SUBMITTED EVIDENCE OF ITS ENTITLEMENT TO REPRESENT EMPLOYEES IN THE FORM DESCRIBED BY THE BOARD IN THE SPRING PLASTERING LIMITED CASE, BOARD FILE 13709-67-R, IN ITS DECISION AS OF THE DATE HEREOF, AND FOR THE REASONS GIVEN BY THE BOARD IN THAT CASE, THE BOARD FINDS THAT THE RESPONDENT'S EVIDENCE OF ENTITLEMENT TO REPRESENT THE EMPLOYEES IS SATISFACTORY EVIDENCE FOR THE PURPOSE OF SECTION 45A OF THE LABOUR RELATIONS ACT. HOWEVER, WHILE THE RESPONDENT ADDUCED EVIDENCE THAT IT HAD THE RIGHT TO REPRESENT FIVE OF THE RESPONDENT'S EMPLOYEES PRIOR TO ENTERING INTO THE COLLECTIVE AGREEMENT ON OCTOBER 18TH, 1966, THE RESPONDENT TESTIFIED THAT THERE WERE AN ADDITIONAL FIVE OR SIX PERSONS WHOM THE RESPONDENT DID NOT CLAIM TO REPRESENT AS OF THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO. SECTION 45A(3) OF THE ACT PROVIDES THAT THE ONUS OF ESTABLISHING THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO RESTS ON THE PARTIES TO THE AGREEMENT. IN ORDER TO SATISFY THE ONUS SET FORTH IN SECTION 45A(3), THE PARTIES TO THE AGREEMENT MUST ESTABLISH THAT THE TRADE UNION WAS ENTITLED TO REPRESENT A SIMPLE MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO.

4. IT IS READILY APPARENT FROM THE EVIDENCE DESCRIBED ABOVE THAT EVEN THOUGH THE BOARD HAS GIVEN EFFECT TO THE EVIDENCE ADDUCED BY THE RESPONDENT, OF ITS ENTITLEMENT TO REPRESENT FIVE OF THE INTERVENER'S EMPLOYEES, THE RESPONDENT DID NOT REPRESENT A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO. ACCORDINGLY, THE BOARD FINDS THAT THE RESPONDENT AND THE INTERVENER, WHO WERE THE PARTIES TO THE AGREEMENT REFERRED TO, HAVE FAILED TO SATISFY THE ONUS UPON THEM TO ESTABLISH THAT THE RESPONDENT UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE

BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO.

5. THE BOARD THEREFORE DECLARES THAT THE RESPONDENT UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT AND ACCORDINGLY, THE SAID COLLECTIVE AGREEMENT CEASES TO OPERATE PURSUANT TO THE PROVISIONS OF SECTION 45A(4) OF THE ACT.

13707-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) v. THE CANADIAN PLASTERERS' UNION (RESPONDENT) v. TORONTO PLASTERING COMPANY LIMITED (INTERVENER)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCE AT HEARING: R. KOSKIE, J. B. WATERMAN AND ANGELO BURIGANA FOR THE APPLICANT, J. A. RYDER FOR THE RESPONDENT, R. D. PERKINS FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 13, 1967.

1. THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 45A OF THE LABOUR RELATIONS ACT, FOR A DECLARATION THAT AT THE TIME THE RESPONDENT AND THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT THAT THE RESPONDENT WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT. FOR THE REASONS GIVEN BY THE BOARD IN THE SPRING PLASTERING LIMITED CASE, BOARD FILE 13709-67-R, ON THE DATE HEREOF, AND THE REASONS GIVEN BY THE BOARD IN THE NATIONAL PLASTERING COMPANY LIMITED CASE, BOARD FILE 13705-67-R, ON THE DATE HEREOF, THE BOARD FINDS THAT SINCE THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THIS APPLICATION, THE APPLICANT HAS THE STATUS TO BRING THIS APPLICATION.

2. THE RESPONDENT AND THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT DATED OCTOBER 18TH, 1966. THE PARTIES TO THAT AGREEMENT FAILED TO ADDUCE EVIDENCE TO ESTABLISH THAT AT THE TIME THE AGREEMENT WAS ENTERED INTO THE RESPONDENT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

3. WHILE THE APPLICANT FILED A PETITION SIGNED BY EMPLOYEES IN SUPPORT OF ITS APPLICATION, WHEREIN IT WAS STATED THAT THE EMPLOYEES NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION, SUCH PETITION IS NOT RELEVANT TO PROCEEDINGS UNDER SECTION 45A. THE ONLY QUESTION TO BE DETERMINED UNDER SECTION 45A IS WHETHER OR NOT THE RESPONDENT UNION WAS "ENTITLED TO REPRESENT THE EMPLOYEES" OF THE INTERVENER AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO. THE BOARD ACCORDINGLY DID NOT INQUIRE INTO THE ORIGINATION AND PREPARATION OF THE PETITION FILED BY THE APPLICANT.

4. THIS APPLICATION WAS MADE ON SEPTEMBER 29TH, 1967 AND THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS OCTOBER 11TH, 1967. ON OCTOBER 16TH, 1967, THE BOARD RECEIVED A LETTER FROM THE RESPONDENT DATED OCTOBER 13TH, 1967, WHICH READS AS FOLLOWS:

AS YOU KNOW WE ARE SOLICITORS FOR THE RESPONDENT IN EACH OF THESE CASES.

SECTION 45A OF THE ACT CONTEMPLATES THAT AN APPLICATION MAY BE MADE BY A TRADE UNION "REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT". THE APPLICATIONS IN THESE CASES DO NOT REVEAL THE NAMES OF THE EMPLOYEES WITHIN THE BARGAINING UNITS THAT THE APPLICANT TRADE UNION PURPORTS TO REPRESENT.

IT HAS RECENTLY COME TO OUR ATTENTION THAT EFFORTS HAVE BEEN MADE BY THE APPLICANT TO REQUIRE EMPLOYEES IN THE BARGAINING UNIT TO SIGN MEMBERSHIP CARDS. THESE EFFORTS HAVE BEEN COERCIVE AND HAVE BEEN ACCOMPANIED BY OPEN SUPPORT THEREFOR FROM THE EMPLOYER. THE RESULT OF SUCH EFFORTS, IN OUR RESPECTFUL SUBMISSION, IS TO DESTROY THE VALIDITY OF THE MEMBERSHIP AND IN THOSE CIRCUMSTANCES THE APPLICANT MAY BE WITHOUT STATUS TO BRING THESE APPLICATIONS.

BECAUSE THE NAMES OF THE EMPLOYEES WHICH THE APPLICANT PROPOSES TO REPRESENT HAVE NOT BEEN REVEALED WE ARE NOT NOW IN A POSITION TO MAKE SPECIFIC CHARGES WITH RESPECT TO THE APPLICANT'S MEMBERSHIP POSITION.

WE THEREFORE WISH TO ADVISE YOU THAT WE WILL AT THE HEARING OF THIS MATTER ASK THE BOARD TO REQUIRE THE APPLICANT TO ESTABLISH ITS MEMBERSHIP POSITION AND WE MAY THEN REQUEST LEAVE TO MAKE SPECIFIC CHARGES IF SO ADVISED.

WE HAVE TAKEN THE LIBERTY OF SENDING A COPY OF THIS LETTER TO THE SOLICITORS FOR THE APPLICANT.

5. A COPY OF THIS LETTER WAS DELIVERED TO THE SOLICITORS FOR THE APPLICANT AND THE BOARD RECEIVED A LETTER FROM THE APPLICANT ON MONDAY, OCTOBER 16TH, 1967, BEARING THE DATE OF OCTOBER 16TH, 1967, WHICH READS AS FOLLOWS:

WE ACKNOWLEDGE RECEIPT OF A COPY OF A LETTER DATED OCTOBER 13TH, 1967 FROM MESSRS. CAMERON, BREWIN, MCCALLUM AND SCOTT ADDRESSED TO THE BOARD.

MR. SCOTT IS NO DOUBT AWARE OF THE BOARD'S POLICY NOT TO REVEAL THE NAMES OF EMPLOYEES WHO ARE REPRESENTED

BY A PARTICULAR TRADE UNION. IF THE RESPONDENT INTENDS TO MAKE ANY ALLEGATIONS OF IMPROPER CONDUCT WHETHER THEY BE SPECIFIC OR OTHERWISE, WE INSIST THAT WE BE GIVEN FULL PARTICULARS OF THE SAME IN ACCORDANCE WITH SECTION 47 OF THE RULES OF PROCEDURE UNDER THE LABOUR RELATIONS ACT. WE THEREFORE REQUEST THE BOARD TO DIRECT THE RESPONDENT TO PROVIDE US WITH THESE PARTICULARS, WHICH ARE REQUIRED TO ENABLE THE APPLICANT TO ANSWER THE RESPONDENT'S CHARGES.

IT SHOULD BE UNDERSTOOD THAT WE RESERVE OUR RIGHTS TO ARGUE AT THE HEARING THAT THE BOARD OUGHT NOT ENTERTAIN ANY OF THE RESPONDENT'S CHARGES.

A COPY OF THIS LETTER IS BEING DELIVERED BY HAND THIS MORNING TO MESSRS. CAMERON, BREWIN, MCCALLUM AND SCOTT.

6. THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE ON WEDNESDAY, OCTOBER 18TH, 1967. AT THE HEARING IN THIS MATTER THE RESPONDENT REQUESTED AN ADJOURNMENT AND ASKED THE BOARD TO DIRECT THE APPLICANT TO PROVIDE THE RESPONDENT WITH THE NAMES OF THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS AND REPEATED ITS ARGUMENT THAT IT WAS HAMPERED IN PREPARING ITS CHARGES AGAINST THE APPLICANT BECAUSE IT DID NOT HAVE THE NAMES OF THE PERSONS CLAIMED AS MEMBERS. THE APPLICANT TOOK THE POSITION THAT THE RESPONDENT'S ALLEGATIONS CONTAINED IN ITS LETTER OF OCTOBER 13TH, WAS SO INDEFINITE AND LACKING IN PARTICULARS THAT THEY FAIL TO COMPLY WITH SECTION 47 OF THE BOARD'S RULES OF PROCEDURE AND THE ALLEGATIONS SHOULD ACCORDINGLY BE DISMISSED. THE APPLICANT AND THE INTERVENER OPOSED THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT. THE RESPONDENT DID NOT ATTEMPT TO PROVIDE FURTHER PARTICULARS OF ITS ALLEGATIONS AT THE HEARING. AFTER HEARING THE ARGUMENT WITH RESPECT TO THE RESPONDENT'S REQUEST FOR ADJOURNMENT FROM ALL PARTIES THE BOARD RULED THAT THE RESPONDENT WAS NOT ENTITLED TO THE ADJOURNMENT REQUESTED AND STATED THAT ITS REASONS WOULD BE GIVEN IN WRITING.

7. SECTION 47 OF THE BOARD'S RULES OF PROCEDURE READS AS FOLLOWS:

47.--(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,

(A) INCLUDE IN THE APPLICATION OR COMPLAINT; OR

(B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME



WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

(2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

(3) WHERE A STATEMENT IN AN APPLICATION OR COMPLAINT OR IN ANY DOCUMENT FILED UNDER THESE RULES IN RESPECT OF THE APPLICATION OR COMPLAINT IS SO INDEFINITE OR INCOMPLETE AS TO HAMPER ANY PERSON IN THE PREPARATION OF HIS CASE, THE BOARD MAY, UPON THE REQUEST OF THE PERSON MADE PROMPTLY UPON RECEIPT OF THE APPLICATION, COMPLAINT OR DOCUMENT, DIRECT THAT THE INFORMATION STATED BE MADE SPECIFIC OR COMPLETE AND, IF THE PERSON SO DIRECTED FAILS TO COMPLY WITH THE DIRECTION, THE BOARD MAY STRIKE THE STATEMENT FROM THE APPLICATION, COMPLAINT OR DOCUMENT.

(4) NO PERSON SHALL ADDUCE EVIDENCE AT THE HEARING OF AN APPLICATION OR COMPLAINT OF ANY MATERIAL FACT THAT HAS NOT BEEN INCLUDED IN THE APPLICATION OR COMPLAINT OR IN ANY DOCUMENT FILED UNDER THESE RULES IN RESPECT OF THE APPLICATION OR COMPLAINT, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

8. THE BOARD ADVISED THE PARTIES THAT IT COULD SEE NO REASON TO WAIVE THE PROVISIONS OF SECTION 83 OF THE ACT AND CONSENT TO THE DISCLOSURE TO THE RESPONDENT OF THE NAMES OF THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS. WHILE THE BOARD DOES CONSENT TO THE DISCLOSURE OF THE MEMBERSHIP OF PERSONS IN CERTAIN APPLICATIONS, IT DOES SO ONLY WHERE SUCH DISCLOSURE IS ABSOLUTELY UNAVOIDABLE SUCH AS WOULD BE THE CASE IN AN APPLICATION UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHERE AN EMPLOYEE HAS CLAIMED THAT HE HAS BEEN DISCHARGED BECAUSE OF HIS UNION ACTIVITY. IN THIS CASE, HOWEVER, THE RESPONDENT COULD GIVE NO VALID REASON WHY THE BOARD SHOULD DEPART FROM ITS USUAL PRACTICE OF MAINTAINING SECRECY WITH RESPECT TO UNION MEMBERSHIP. IF THE RESPONDENT DID, IN FACT, HAVE INFORMATION THAT CERTAIN COMPANY OFFICIALS HAD IN SOME MANNER SUPPORTED THE EFFORTS OF THE APPLICANT UNION, THE NAME OR POSITION OF SUCH MANAGEMENT OFFICIAL WOULD BE AVAILABLE TO THE RESPONDENT

AND THE RESPONDENT WOULD ALSO HAVE AVAILABLE THE TIME WHEN AND THE PLACE WHERE THE ACTIVITIES TOOK PLACE. IT WAS READILY APPARENT FROM THE REPRESENTATIONS MADE ON BEHALF OF THE RESPONDENT THAT THE ONLY REASON THE RESPONDENT DESIRED THE NAMES OF THE APPLICANT'S MEMBERS WAS TO ENABLE THE RESPONDENT TO CONDUCT A "FISHING EXPEDITION" IN AN ATTEMPT TO DETERMINE WHETHER OR NOT ANY UNFAIR PRACTICES HAD TAKEN PLACE.

9. IF THE RESPONDENT HAD PARTICULARS OF THE ALLEGATIONS WHICH IT MADE, IT SHOULD HAVE COMPLIED WITH THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE AND PROVIDED A STATEMENT OF ALL THE PARTICULARS WHICH WERE AVAILABLE TO IT. IT IS TO BE NOTED THAT IN THE RESPONDENT'S LETTER OF OCTOBER 13TH THE RESPONDENT STATES THAT "... WE ARE NOT NOW IN A POSITION TO MAKE SPECIFIC CHARGES WITH RESPECT TO THE APPLICANT'S MEMBERSHIP POSITION." READING THIS SENTENCE IN CONJUNCTION WITH THE THIRD PARAGRAPH OF THE RESPONDENT'S LETTER OF OCTOBER 13TH, IT BECAME APPARENT THAT THE ALLEGATIONS WERE SO INDEFINITE AND INCONCLUSIVE AS TO BE IN REALITY A FAILURE TO CONSTITUTE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT WITHIN THE MEANING OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE.

10. EVEN THOUGH IT WAS ARGUED THAT THE NAMES OF THE APPLICANT'S MEMBERS WOULD HAVE ENABLED THE RESPONDENT TO LIMIT THE PARTICULARS IT WISHED TO ALLEGE, THE FACT REMAINS THAT WE ARE DEALING WITH A SITUATION WHERE THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS ARE RELATIVELY SMALL. IN THE SPRING PLASTERING LIMITED CASE, THERE WERE THREE EMPLOYEES IN THE BARGAINING UNIT. IN THE NATIONAL PLASTERING COMPANY LIMITED CASE, THERE WERE THREE EMPLOYEES IN THE BARGAINING UNIT. IN THE GOLDSTAR PLASTERING COMPANY LIMITED CASE, THERE WERE ELEVEN EMPLOYEES IN THE BARGAINING UNIT. IN THE CORTINA PLASTERING COMPANY LIMITED CASE, THERE WERE EIGHTEEN EMPLOYEES IN THE BARGAINING UNIT AND IN THE TORONTO PLASTERING COMPANY LIMITED CASE, THERE WERE FOURTEEN EMPLOYEES IN THE BARGAINING UNIT. THE RESPONDENT'S LETTER OF OCTOBER 13TH WAS DIRECTED TO ALL FIVE APPLICATIONS. IF THE RESPONDENT DID, IN FACT, HAVE INFORMATION CONCERNING IMPROPER OR IRREGULAR CONDUCT, THERE WAS NOTHING TO PREVENT THE RESPONDENT FROM PROVIDING THE NAME OF THE PERSON WHO ENGAGED IN SUCH IMPROPER OR IRREGULAR CONDUCT AND THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OCCURRED AND A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT WHICH THE RESPONDENT ALLEGED TO HAVE BEEN BREACHED BY SUCH CONDUCT. THE LACK OF THE NAMES OF THE APPLICANT'S MEMBERS COULD NOT CONCEIVABLY PREVENT THE PREPARATION OF SUCH PARTICULARS.

11. IN THE FLECK MANUFACTURING LIMITED CASE, 62 C.L.L.C. 1046, THE BOARD STATED AS FOLLOWS:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY

INTEND TO MAKE ALLEGATIONS OR IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

THE MATERIAL PROVISIONS OF THE RULES THERE REFERRED TO ARE NOW CONTAINED IN SECTION 47(1) AND (2) OF THE BOARD'S RULES OF PROCEDURE.

12. IN THE RESPONDENT'S LETTER OF OCTOBER 13TH, THE RESPONDENT STATED THAT "IT HAS RECENTLY COME TO OUR ATTENTION". THERE IS NO INDICATION AS TO WHAT THE RESPONDENT INTENDED TO IMPLY BY THE USE OF THE TERM "RECENTLY". A PARTY INTENDING TO ALLEGE IMPROPER CONDUCT MUST DO SO EXPEDITIOUSLY. THE BOARD REFUSED TO ALLOW THE RESPONDENT AN OPPORTUNITY TO ADDUCE FURTHER PARTICULARS BECAUSE EVEN THOUGH A DEMAND WAS MADE FOR PARTICULARS BY THE APPLICANT IN ITS LETTER OF OCTOBER 16TH, THE RESPONDENT FAILED TO PROVIDE SUCH PARTICULARS AND THE BOARD RULED THAT THE RESPONDENT WAS NOT ENTITLED TO DELAY THE PROCEEDINGS BY REFUSING TO PROVIDE SUCH PARTICULARS. SINCE THE ALLEGATIONS OF THE RESPONDENT WERE SO NEBULOUS SO AS TO PREVENT THE OTHER PARTIES FROM MEETING THEM, THE BOARD REFUSED THE RESPONDENT THE OPPORTUNITY TO CALL EVIDENCE CONCERNING SUCH ALLEGATIONS. IT IS APPARENT THAT ANY EVIDENCE OF PROBATIVE VALUE WHICH WAS AVAILABLE TO THE RESPONDENT WOULD HAVE TO CONCERN EVENTS WHICH WOULD BE IN GREATER PARTICULARITY THAN ALLEGATIONS CONTAINED IN THE RESPONDENT'S LETTER. IF PARTICULARS WERE AVAILABLE THE RESPONDENT CANNOT SEEK AN ADJOURNMENT BY RELYING ON ITS OWN FAILURE TO PROVIDE THEM AS REQUIRED BY SECTION 47 OF THE BOARD'S RULES OF PROCEDURE AND IN ACCORDANCE WITH THE REQUEST OF THE APPLICANT CONTAINED IN ITS LETTER OF OCTOBER 16TH. IN THIS REGARD, THE BOARD ADOPTS THE REASONING SET FORTH IN THE BOARD'S DECISION IN THE FRANCOIS CYR AND THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 CASE, BOARD FILE 13864-67-R, NOVEMBER 29TH, 1967, AND THE NORTH AMERICAN PLASTICS Co. LIMITED CASE, BOARD FILE 13868-67-R, NOVEMBER 29TH, 1967.

13. FOR THE FOREGOING REASONS AND THE REASONS ENUNCIATED BY THE BOARD ORALLY AT THE HEARING IN THIS MATTER, THE BOARD REFUSED THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT.

14. THE RESPONDENT BY ITS LETTER DATED OCTOBER 26TH, 1967 REQUESTED THE BOARD TO REVIEW ITS DECISION MADE AT THE HEARING IN THIS MATTER. THE RESPONDENT'S LETTER OF OCTOBER 26TH READS AS FOLLOWS:

AS YOU KNOW, WE ARE SOLICITORS FOR THE RESPONDENT IN EACH OF THE ABOVE NOTED CASES. AS YOU ALSO KNOW, A HEARING HAS RECENTLY BEEN CONCLUDED AND THE BOARD, HAS IN EACH CASE, RESERVED ITS DECISION.

AT AN EARLY STAGE IN THE HEARING OF THE FIVE CASES, WHICH WERE BY CONSENT JOINTLY CONDUCTED, THE BOARD WAS CALLED UPON TO RULE UPON TWO MATTERS WHICH MAY BE SUMMARIZED AS FOLLOWS:

- (1) THE RESPONDENT ASKED TO KNOW THE NAMES OF THE EMPLOYEES IN THE BARGAINING UNIT THAT THE APPLICANT PURPORTED TO REPRESENT. THE RESPONDENT REQUIRED THIS INFORMATION SO THAT IT COULD GIVE FULL, PRECISE AND DETAILED PARTICULARS OF THE APPLICANT'S CONDUCT, WHICH CONDUCT WOULD DEPRIVE THE APPLICANT OF STATUS TO MAKE THE INSTANT APPLICATIONS.
- (2) AS A CONSEQUENCE OF THE ABOVE REQUEST, THE RESPONDENT SOUGHT LEAVE OF THE BOARD TO EXTEND THE TIME PERIOD DURING WHICH PARTICULARS OF CHARGES MIGHT BE PROVIDED.

IN BOTH INSTANCES THE BOARD RULED AGAINST THE RESPONDENT'S REQUEST WITH THE RESULT THAT THE CHARGES MADE BY THE RESPONDENT WERE NOT INVESTIGATED BY THE BOARD AND THE RESPONDENT WAS NOT PERMITTED TO LEAD EVIDENCE WITH RESPECT TO THEM.

WE INVITE THE BOARD TO TREAT THIS LETTER AS A FORMAL REQUEST BY THE RESPONDENT FOR A REVIEW OF THE BOARD'S DECISION IN EACH OF THESE MATTERS PURSUANT TO SECTION 79 (1) OF THE LABOUR RELATIONS ACT.

THE FACTS THAT ARE BEFORE THE BOARD MAY BE SUMMARIZED AS FOLLOWS:

- (1) THE RESPONDENT, SHORTLY PRIOR TO OCTOBER 13, 1967, OBTAINED INFORMATION INDICATING THAT A SUBSTANTIAL NUMBER OF EMPLOYEES OF THE INTERVENER COMPANIES HAD BEEN COERCED INTO SIGNING MEMBERSHIP CARDS IN THE APPLICANT. THIS COERCIVE ACTION HAD TAKEN MANY FORMS, HAD OCCURRED ON VARIOUS OCCASIONS, AT VARIOUS



PLACES AND WAS IN SOME INSTANCES THE ACTION OF THE APPLICANT ALONE, IN SOME INSTANCES THE ACTION OF THE INTERVENOR ALONE AND IN SOME INSTANCES THE ACTION OF BOTH PARTIES.

- (2) ON OCTOBER 13, 1967, ACTING FOR THE RESPONDENT, WE REQUESTED THE CONSENT OF THE BOARD TO THE RELEASE EITHER AT THE HEARING OR EARLIER, OF THE NAMES OF THE EMPLOYEES WHICH THE APPLICANT PURPORTED TO REPRESENT. OUR LETTER INDICATED THAT THE INFORMATION WAS SOUGHT BY US SO THAT WE WOULD BE "IN A POSITION TO MAKE SPECIFIC CHARGES WITH RESPECT TO THE APPLICANT'S MEMBERSHIP POSITION".
- (3) ON OCTOBER 16, 1967, WE RECEIVED A COPY OF A LETTER FROM THE APPLICANT DIRECTED TO THE BOARD REQUESTING IT TO DISMISS OUR APPLICATION.
- (4) THE BOARD MADE NO DECISION WITH RESPECT TO THE RESPONDENT'S APPLICATION PRIOR TO THE HEARING;
- (5) AT THE HEARING THE BOARD FIRST RULED THAT IT WOULD NOT DIVULGE TO THE RESPONDENT THE NAMES OF THE EMPLOYEES IN THE BARGAINING UNIT THAT THE APPLICANT PURPORTED TO REPRESENT. IMMEDIATELY THEREAFTER THE BOARD RULED THAT THE RESPONDENT WOULD NOT BE PERMITTED TO PARTICULARIZE ITS CHARGES FURTHER OR TO CALL EVIDENCE WITH RESPECT TO THE CHARGES MADE IN THE LETTER OF OCTOBER 13, 1967, BECAUSE THOSE CHARGES CONTAINED INADEQUATE PARTICULARS.

THE BOARD'S DECISION IS THESE TWO MATTERS IS OF GRAVE CONCERN TO THE RESPONDENT AND IT RESPECTFULLY REQUESTS THAT THE BOARD SHOULD REVIEW ITS DECISIONS.

IT SHOULD BE MADE PERFECTLY CLEAR THAT ON OCTOBER 13, 1967, IT WAS NOT PRACTICALLY POSSIBLE FOR THE RESPONDENT TO GIVE ACCURATE AND FULL PARTICULARS OF THE COERCION DIRECTED AGAINST SPECIFIC EMPLOYEES IN THE BARGAINING UNIT PURPORTEDLY REPRESENTED BY THE APPLICANT UNLESS IT KNEW WHO THOSE EMPLOYEES WERE. TO ASK THE RESPONDENT TO GIVE PARTICULARS "IN A VACUUM" AND WITHOUT REFERENCE TO SPECIFIC EMPLOYEES WOULD HAVE REQUIRED THE RESPONDENT TO LIST MANY DOZENS OF INSTANCES WHICH WOULD HAVE IN ALL PROBABILITY INVOLVED PERSONS WHO MIGHT NOT HAVE BEEN EMPLOYEES IN THE BARGAINING UNIT THAT THE APPLICANT SOUGHT TO REPRESENT.

IT WAS IN THOSE CIRCUMSTANCES, THEREFORE, THAT THE RESPONDENT MADE ITS FIRST REQUEST OF THE BOARD. THE POINT OF THAT REQUEST WAS THAT IF IT WERE GRANTED IT WOULD BE POSSIBLE TO PROVIDE IMMEDIATELY PRECISE AND DETAILED PARTICULARS REFERRING ONLY TO THE EMPLOYEES THAT THE APPLICANT SOUGHT TO REPRESENT.

THE PRACTICAL EFFECT OF THE BOARD'S DECISION MAY BE SUMMARIZED IN THE FOLLOWING WAY. THE RESPONDENT INDICATED TO THE BOARD AND TO THE PARTIES THAT IT HAD INFORMATION WHICH WOULD JUSTIFY CHARGES AGAINST CONDUCT OF THE APPLICANT IN OBTAINING MEMBERSHIP. IN ORDER TO DETERMINE WHAT PARTICULARS SHOULD BE PROVIDED THE RESPONDENT ASKED FOR A PRELIMINARY RULING AS TO WHETHER THE NAMES OF CERTAIN EMPLOYEES MIGHT BE DISCLOSED BY THE BOARD. THE EFFECT OF THE BOARD'S DECISION TO DISMISS THE RESPONDENT'S PRELIMINARY APPLICATION WAS TO THEREBY PREVENT THE FILING OF ANY CHARGES WHATEVER.

WE HAVE TAKEN THE LIBERTY OF SENDING A COPY OF THIS LETTER TO THE SOLICITORS FOR THE APPLICANT AND THE INTERVENOR.

15. THE SECOND LAST PARAGRAPH OF THE RESPONDENT'S LETTER OF OCTOBER 26TH ALLEGES THAT SINCE THE BOARD REFUSED TO PROVIDE THE RESPONDENT WITH THE NAMES OF THE APPLICANT'S MEMBERS, WHICH WAS THE RESPONDENT'S "PRELIMINARY APPLICATION", "THE EFFECT OF THE BOARD'S DECISION TO DISMISS THE RESPONDENT'S PRELIMINARY APPLICATION WAS TO THEREBY PREVENT THE FILING OF ANY CHARGES WHATEVER." WHEN THIS ALLEGATION IS READ IN CONJUNCTION WITH PARAGRAPHS 4 AND 5 OF THE RESPONDENT'S LETTER OF OCTOBER 13TH, 1967, WHICH IS SET FORTH IN ITEM 4 HEREOF, IT IS THEREFORE APPARENT, OUT OF THE MOUTH OF THE RESPONDENT, THAT WITHOUT THE NAMES OF THE APPLICANT'S MEMBERS NO CHARGES COULD BE FILED AND ACCORDINGLY NO CHARGES HAVE BEEN MADE.

16. SINCE ALL THE ISSUES RAISED IN THE RESPONDENT'S LETTER OF OCTOBER 26TH WERE RAISED BY THE RESPONDENT AT THE HEARING OF THIS MATTER, AND SINCE THE RESPONDENT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER, AND SINCE THE RESPONDENT HAD AN OPPORTUNITY TO ARGUE AND, IN FACT, DID ARGUE ALL THE ISSUES RAISED IN ITS LETTER OF OCTOBER 26TH, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER THE RULING MADE BY THE BOARD AT THE HEARING IN THIS MATTER AS REQUESTED BY THE RESPONDENT, AND FINDS THAT THE RESPONDENT HAS FAILED TO JUSTIFY ITS REQUEST THAT THE BOARD SHOULD CONSENT TO THE DISCLOSURE OF THE IDENTITY OF THE APPLICANT'S MEMBERS.

17. THE BOARD ACCORDINGLY FINDS THAT SINCE THE MEMBERSHIP RECORDS OF THE APPLICANT ARE PROTECTED BY SECTION 83 OF THE ACT, THE BOARD SHOULD NOT DEPART FROM ITS USUAL PRACTICE OF REFUSING TO DISCLOSE MEMBERSHIP IN THE CIRCUMSTANCES OF THIS CASE. IT IS TO BE NOTED THAT THE RESPONDENT IS

IN NO BETTER POSITION WITH RESPECT TO THE REQUEST IT HAS MADE THAN WITH THE POSITION OF A TRADE UNION WHO FINDS ITSELF FACED WITH A PETITION IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION. THE BOARD INVARIABLY REFUSES TO DISCLOSE THE NAMES OF THE PERSONS WHO SIGNED THE PETITION AGAINST THE APPLICATION FOR CERTIFICATION EVEN THOUGH TRADE UNIONS OFTEN REQUEST THE BOARD TO PROVIDE THEM WITH SUCH INFORMATION.

18. ACCORDINGLY, THE BOARD'S RULING IN THIS CASE IS CONSISTENT WITH ITS USUAL PRACTICE WHERE SIMILAR REQUESTS HAVE BEEN MADE IN OTHER CASES, AND THE BOARD IS OF OPINION THAT SUCH RULINGS ARE CONSISTENT WITH THE PURPOSE AND INTENT OF SECTION 83 OF THE ACT.

19. THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS FAILED TO SATISFY THE ONUS ON IT, PURSUANT TO THE PROVISIONS OF SECTION 45A(3) OF THE ACT, THAT THE RESPONDENT REPRESENTED THE EMPLOYEES OF THE INTERVENER AT THE TIME THE AGREEMENT WAS ENTERED INTO.

20. THE BOARD THEREFORE DECLARES THAT THE RESPONDENT WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT AND ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 45A(4), THE COLLECTIVE AGREEMENT IN OPERATION BETWEEN THE RESPONDENT AND THE INTERVENER CEASES TO OPERATE.

13709-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) v. THE CANADIAN PLASTERERS' UNION (RESPONDENT) v. SPRING PLASTERING LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: R. KOSKIE, J. B. WATERMAN AND ANGELO BURINGANA FOR THE APPLICANT, J. A. RYDER FOR THE RESPONDENT, R. D. PERKINS FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 13, 1967.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAD BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED NOVEMBER 14TH, 1967, IN THIS MATTER.

2. AT THE HEARING, A QUESTION AROSE AS TO WHETHER THE INTERVENER HAD ANY EMPLOYEES IN THE BARGAINING UNIT ON THE DATE THIS APPLICATION WAS MADE. THE APPLICANT MAILED THE APPLICATION ON A SATURDAY BY REGISTERED MAIL. PURSUANT TO THE PROVISIONS OF SECTION 50(1)(B) OF THE BOARD'S RULES OF PROCEDURE, THIS APPLICATION IS DEEMED TO HAVE BEEN MADE ON SATURDAY, THE DATE IT WAS MAILED REGISTERED MAIL. NONE OF THE INTERVENER'S EMPLOYEES WAS AT WORK ON THE SATURDAY. IT APPEARS THAT

THE INTERVENER IS AN EMPLOYER WITHIN THE MEANING OF SECTION 90 OF THE ACT AND THE APPLICANT AND THE RESPONDENT ARE TRADE UNIONS WITHIN THE MEANING OF SECTION 90. IN APPLICATIONS BROUGHT UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, ONLY THOSE EMPLOYEES ACTUALLY AT WORK ON THE DATE THE APPLICATION WAS MADE ARE INCLUDED IN THE LIST OF EMPLOYEES FOR THE PURPOSE OF THE COUNT. IN THIS CASE, HOWEVER, THE APPLICANT APPLIED UNDER THE GENERAL PROVISIONS OF THE ACT AND NOT UNDER THE CONSTRUCTION INDUSTRY PROVISIONS AND ACCORDINGLY, THE RULES PERTAINING TO THE GENERAL PROVISIONS OF THE ACT APPLY.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES AS SET FORTH IN THE LETTER FROM THE INTERVENER DATED NOVEMBER 17TH, 1967, AND LETTER FROM THE APPLICANT DATED NOVEMBER 20TH, 1967, AND THE LETTER FROM THE RESPONDENT DATED NOVEMBER 22ND, 1967, THE BOARD FINDS THAT IN ACCORDANCE WITH THE PRINCIPLES ENUNCIATED BY THE BOARD IN THE SYDENHAM DISTRICT HOSPITAL CASE, O.L.R.B. MONTHLY REPORT, MAY 1967, P. 135, ON THE DATE OF THE MAKING OF THIS APPLICATION THE INTERVENER EMPLOYED THREE EMPLOYEES. ONE OF THE THREE EMPLOYEES EMPLOYED BY THE INTERVENER WAS CLAIMED BY THE APPLICANT AS A MEMBER AS OF THE DATE THIS APPLICATION WAS MADE. THE EVIDENCE SUBMITTED BY THE APPLICANT WAS IN THE FORM OF A COMBINATION APPLICATION AND RECEIPT CARD SIGNED AND COUNTERSIGNED BY THE EMPLOYEE CONCERNED AND SHOWING THE PAYMENT OF MONEY ON ACCOUNT OF INITIATION FEES. THE SIGNATURE OF THE EMPLOYEE ON THE RECEIPT AND THE ACKNOWLEDGMENT OF PAYMENT WAS WITNESSED BY AN OFFICIAL OF THE APPLICANT. ACCORDING TO THE PROVISIONS OF SECTION 45A, "A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT" MAY APPLY DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN ANOTHER TRADE UNION AND THE EMPLOYER OF THE EMPLOYEE CONCERNED IS IN OPERATION, FOR A DECLARATION THAT THE OTHER TRADE UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT. FOR THE REASONS SET OUT BELOW AND FOR THE REASONS ENUNCIATED BY THE BOARD IN THE ESSEX HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 885, THE BOARD FINDS THAT THE APPLICANT HAS ESTABLISHED THAT IT "REPRESENTS" AN EMPLOYEE OF THE INTERVENER AND IS THEREFORE ENTITLED TO BRING THIS APPLICATION. SINCE THIS IS NOT AN APPLICATION FOR CERTIFICATION THE BOARD DOES NOT REQUIRE THE SAME TYPE OF EVIDENCE AS IS REQUIRED BY SECTION 7 OF THE ACT WHERE AN APPLICANT FOR CERTIFICATION MUST SATISFY THE BOARD THAT EMPLOYEES ARE "MEMBERS" OF THE TRADE UNION. IN ADDITION, AN APPLICANT FOR A DECLARATION PURSUANT TO THE PROVISIONS OF SECTION 45A NEED NOT FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) WHICH WOULD BE REQUIRED ON AN APPLICATION FOR CERTIFICATION. ACCORDINGLY, THE BOARD FINDS THAT THE APPLICANT HAS STATUS TO BRING THIS APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 45A OF THE LABOUR RELATIONS ACT SINCE THE APPLICANT TRADE UNION REPRESENTS ONE OF THE EMPLOYEES IN THE BARGAINING UNIT WITH WHICH WE ARE HERE CONCERNED.



4. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS MADE BY THE APPLICANT UNION PURSUANT TO THE PROVISIONS OF SECTION 45A OF THE LABOUR RELATIONS ACT ON SEPTEMBER 30TH, 1967. SECTION 45A READS AS FOLLOWS:

45A.--(1) WHERE AN EMPLOYER AND A TRADE UNION THAT HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER ENTER INTO A COLLECTIVE AGREEMENT, THE BOARD MAY, UPON THE APPLICATION OF ANY EMPLOYEE IN THE BARGAINING UNIT OR OF A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT, DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION, DECLARE THAT THE TRADE UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

(2) BEFORE DISPOSING OF AN APPLICATION UNDER SUBSECTION 1, THE BOARD MAY MAKE SUCH INQUIRY, REQUIRE THE PRODUCTION OF SUCH EVIDENCE AND THE DOING OF SUCH THINGS, OR HOLD SUCH REPRESENTATION VOTES, AS IT DEEMS APPROPRIATE.

(3) ON AN APPLICATION UNDER SUBSECTION 1, THE ONUS OF ESTABLISHING THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO RESTS ON THE PARTIES TO THE AGREEMENT.

(4) UPON THE BOARD MAKING A DECLARATION UNDER SUBSECTION 1, THE COLLECTIVE AGREEMENT IN OPERATION BETWEEN THE TRADE UNION AND THE EMPLOYER CEASES TO OPERATE FORTHWITH.

5. THE RESPONDENT AND THE INTERVENER ARE PARTIES TO AN AGREEMENT WHICH WAS ENTERED INTO ON OCTOBER 18TH, 1966. THE APPLICANT IN THIS CASE HAS CHALLENGED THIS AGREEMENT ON THE BASIS THAT AT THE TIME IT WAS ENTERED INTO THE RESPONDENT WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT. PURSUANT TO THE PROVISIONS OF SECTION 45A(3), THE ONUS OF ESTABLISHING THAT THE RESPONDENT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO RESTS ON THE PARTIES TO THE AGREEMENT. THE RESPONDENT ADDUCED EVIDENCE TO ESTABLISH THAT IT REPRESENTED EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO. THE EVIDENCE CONSISTED OF THE FOLLOWING. THE APPLICANT ESTABLISHED THAT THE VAST MAJORITY OF THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO HAD PREVIOUSLY SIGNED A CARD WHICH READS AS FOLLOWS:

CANADIAN PLASTERERS' UNION

PRINT - STAMPATELLO  
REGISTRATION - DATA

NAME \_\_\_\_\_ TEL. \_\_\_\_\_  
NOME \_\_\_\_\_

ADDRESS \_\_\_\_\_ MARRIED \_\_\_\_\_ SINGLE \_\_\_\_\_  
INDIRIZZO \_\_\_\_\_ SPOSATO \_\_\_\_\_ SCAPOLO \_\_\_\_\_

BENEFICIARY \_\_\_\_\_ RELATIONSHIP \_\_\_\_\_  
BENEFICIARIO \_\_\_\_\_ PARENTELA \_\_\_\_\_

U.I.C. No. \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
DISOCCUPAZIONE No. \_\_\_\_\_ DATA DI NASCITA \_\_\_\_\_

REMARKS \_\_\_\_\_

PRESENT THIS CARD REGISTRATION DAY

PRESENTARE QUESTA CARTA AL GIORNO DI REGISTRAZIONE

IN ADDITION TO THE INFORMATION REQUIRED BY THE CARD, EACH CARD ALSO BEARS THE SIGNATURE OF THE INDIVIDUAL EMPLOYEE WHO HAD COMPLETED ALL THE INFORMATION REQUIRED ON THE CARD.

6. THE RESPONDENT ALSO TENDERED IN EVIDENCE PRE-NUMBERED DUPLICATE RECEIPTS IN THE FOLLOWING FORM:

CANADIAN PLASTERERS' UNION

No. 000

TORONTO, - - - - -19 - - -

RECEIVED FROM - - - - -

THE SUM OF \$- - - - -

BEING- - - - -

\$- - - - -

THESE DUPLICATE RECEIPTS CONTAINED THE NAMES (BUT NOT THE SIGNATURES) OF THE EMPLOYEES WHO HAD SIGNED THE REGISTRATION CARD SET OUT ABOVE AND INDICATED THAT SUCH PERSONS HAD PAID THE SUM OF \$5.00 TO \$25.00 ON ACCOUNT OF INITIATION FEE AND THE SIGNATURE OF THE COLLECTOR WHO WAS AN OFFICIAL OF THE UNION APPEARS ON EACH RECEIPT.

7. IF THE EVIDENCE DESCRIBED ABOVE IS SATISFACTORY EVIDENCE OF THE RESPONDENT'S ENTITLEMENT TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT, THE RESPONDENT HAS MET THE ONUS ON IT TO SATISFY THE BOARD THAT AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO THE RESPONDENT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

8. THE QUESTION BEFORE THE BOARD IS WHETHER THE BOARD REQUIRES THE SAME STANDARD OF EVIDENCE TO PROVE THAT A UNION WAS ENTITLED TO REPRESENT EMPLOYEES FOR THE PURPOSE OF SECTION 45A, AS THE EVIDENCE REQUIRED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION. IT IS TO BE NOTED THAT SECTION 45A REQUIRES PROOF THAT A UNION WAS "ENTITLED TO REPRESENT THE EMPLOYEES" WHEREAS SECTION 7(3) OF THE ACT REQUIRES THE BOARD TO BE SATISFIED THAT EMPLOYEES IN THE BARGAINING UNIT ARE "MEMBERS" OF THE TRADE UNION.

9. IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1967, P. 437, THE BOARD ENUNCIATED ITS REQUIREMENTS WITH RESPECT TO MEMBERSHIP IN A TRADE UNION. IT IS APPARENT THAT THE "REGISTRATION CARD" AND THE RECEIPT WHEN READ TOGETHER WOULD NOT SATISFY THE BOARD'S REQUIREMENTS AS SET FORTH IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE SINCE THE REGISTRATION CARD IS NOT AN APPLICATION FOR MEMBERSHIP NOR DOES THE RECEIPT REFER TO AN APPLICATION FOR MEMBERSHIP. THE BOARD'S REQUIREMENTS ON AN APPLICATION FOR CERTIFICATION ARE OF NECESSITY QUITE STRINGENT AND THE DOCUMENTARY EVIDENCE MUST BE SUPPORTED BY A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8).

10. HOWEVER, ON AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS UNDER SECTION 45A, ALL THE PARTIES TO THE COLLECTIVE AGREEMENT MUST DO IS ESTABLISH THAT THE UNION WAS "ENTITLED TO REPRESENT EMPLOYEES" AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO. EVIDENCE THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES MAY WELL TAKE A DIFFERENT FORM FROM THE EVIDENCE OF MEMBERSHIP REQUIRED ON AN APPLICATION FOR CERTIFICATION. IT MUST BE REMEMBERED THAT ANY DOCUMENTARY EVIDENCE OF THE RIGHT OF A TRADE UNION TO REPRESENT EMPLOYEES WAS NOT NECESSARILY PREPARED WITH A VIEW OF APPLYING FOR CERTIFICATION AND ACCORDINGLY COULD REFLECT THE DESIRE OF THE EMPLOYEES TO HAVE THE UNION REPRESENT THEM WITHOUT COMPLYING WITH THE BOARD'S STRINGENT TESTS OF MEMBERSHIP.

11. WITHOUT ATTEMPTING TO MAKE A DEFINITIVE FINDING AS TO WHAT CONSTITUTES EVIDENCE OF A UNION'S ENTITLEMENT TO REPRESENT EMPLOYEES FOR THE PURPOSE OF SECTION 45A, THE BOARD FINDS THAT THE DOCUMENTARY EVIDENCE SUBMITTED BY THE RESPONDENT IN THIS CASE LEADS TO THE INESCAPABLE CONCLUSION THAT THE EMPLOYEES IN PAYING THE INITIATION FEE WERE PAYING SUCH FEE FOR MEMBERSHIP IN THE RESPONDENT UNION AND ACCORDINGLY, SUCH DOCUMENTARY EVIDENCE SATISFIES THE BOARD THAT THE RESPONDENT UNION WAS ENTITLED TO

REPRESENT EMPLOYEES WHOSE NAMES APPEAR ON THE RECEIPTS AND WHO SIGNED THE REGISTRATION FORM SET OUT ABOVE. AS STATED EARLIER, SINCE THE RESPONDENT HAD FILED EVIDENCE ON BEHALF OF THE VAST MAJORITY OF EMPLOYEES IN THE BARGAINING UNIT AS OF THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO, THE BOARD FINDS THAT THE RESPONDENT HAS SATISFIED THE ONUS OF ESTABLISHING THAT IT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO AND THE BOARD IS THEREFORE NOT PREPARED TO MAKE THE DECLARATION REQUESTED BY THE APPLICANT IN THIS CASE AND THE APPLICATION MUST ACCORDINGLY FAIL.

12. THIS CASE WAS HEARD ALONG WITH SIMILAR APPLICATIONS WITH RESPECT TO NATIONAL PLASTERING COMPANY LIMITED BOARD FILE 13705-67-R, GOLDSTAR PLASTERING COMPANY LIMITED BOARD FILE 13706-67-R, TORONTO PLASTERING COMPANY LIMITED BOARD FILE 13707-67-R AND CORTINA PLASTERING COMPANY LIMITED BOARD FILE 13708-67-R, AND THE PARTIES AGREED TO APPLY THE EVIDENCE TO ALL SUCH CASES. FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISION IN THE ABOVE MENTIONED CASES, ON THE DATE HEREOF, THE BOARD DENIED THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT OF THE INSTANT CASE AND DENIES THE RESPONDENT'S REQUEST AS SET FORTH IN ITS LETTER DATED OCTOBER 26TH, 1967 FOR A REVIEW OF THE BOARD'S DECISION WITH RESPECT TO THE REQUESTED ADJOURNMENT.

13. THIS APPLICATION IS THEREFORE DISMISSED.

13782-67-R: GRANT READY MIX LIMITED (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: G. G. SMITH FOR THE APPLICANT, AND W. W. TILLER AND F. MANONI FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 5, 1967.

1. THIS IS AN APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 45(1) OF THE LABOUR RELATIONS ACT. THE RESPONDENT TRADE UNION WAS CERTIFIED BY THIS BOARD ON AUGUST 22ND, 1967, AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE APPLICANT AT ITS PLANT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF. THE APPLICANT ALLEGES THAT THE RESPONDENT FAILED TO GIVE NOTICE OF DESIRE TO BARGAIN IN ACCORDANCE WITH SECTION 11 OF THE LABOUR RELATIONS ACT, WHICH PROVIDES AS FOLLOWS:

11. FOLLOWING CERTIFICATION, THE TRADE UNION SHALL GIVE THE EMPLOYER WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT.



IT IS NOT DISPUTED THAT NO WRITTEN NOTICE PURSUANT TO SECTION 11 WAS GIVEN TO THE APPLICANT BY THE RESPONDENT WITHIN SIXTY DAYS OF THE CERTIFICATION. THIS APPLICATION WAS MADE ON OCTOBER 24TH, 1967.

2. THE EVIDENCE IS THAT ON SEPTEMBER 14TH, 1967, AN OFFICIAL OF THE TRADE UNION MADE AN ORAL REQUEST TO THE COMPANY TO COMMENCE NEGOTIATIONS. THE COMPANY DID NOT REFUSE TO BARGAIN, BUT IN A LETTER FROM ITS REPRESENTATIVES ON THE SAME DATE REQUIRED THE UNION TO COMPLY STRICTLY WITH THE PROVISIONS OF SECTION 11 BY GIVING "FORMAL NOTICE" THEREUNDER. NO SUCH NOTICE WAS GIVEN BY THE RESPONDENT. ON OCTOBER 2ND, 1967, A MEETING WAS HELD AT THE PREMISES OF THE APPLICANT, RELATING TO NEGOTIATIONS AFFECTING ANOTHER COMPANY ASSOCIATED WITH THE APPLICANT. AT THAT MEETING, OFFICERS OF THE APPLICANT AGREED WITH AN OFFICER OF THE RESPONDENT THAT THE PARTIES WOULD MEET WITH RESPECT TO NEGOTIATIONS AFFECTING BOTH COMPANIES AT A LATER DATE.

3. THE BOARD HAS, IN A NUMBER OF CASES, CONSIDERED THE PURPOSE OF SECTION 45(2) OF THE ACT, AND THE CIRCUMSTANCES IN WHICH THE BOARD WOULD EXERCISE THE DISCRETION PROVIDED FOR IN THAT SECTION. SECTION 45(2) DEALS WITH THE MATTER OF FAILURE TO BARGAIN AFTER THE GIVING OF NOTICE. THIS APPLICATION, OF COURSE, IS BROUGHT UNDER SECTION 45(1), WHICH DEALS WITH FAILURE TO GIVE NOTICE UNDER SECTION 11 OR SECTION 40. THE TWO PROVISIONS ARE PARALLEL, AND THE "MISCHIEF" TO WHICH SECTION 45(1) IS ADDRESSED IS ANALOGOUS TO THAT WHICH SECTION 45(2) IS CONCERNED. IN OUR OPINION, THE BOARD'S DECISIONS RELATING TO SECTION 45(2) ARE RELEVANT IN THE CONSIDERATION OF CASES ARISING UNDER SECTION 45(1).

4. IN THE WALMER TRANSPORT CO. LTD. CASE, (1953) 2 C.L.S. 76-404, THE BOARD STATED:

THE PURPOSE OF THE SECTION IS TO ENSURE THAT A UNION WHICH HAS ACQUIRED BARGAINING RIGHTS ON BEHALF OF EMPLOYEES WILL ACTIVELY PURSUE AND FORWARD THEIR INTERESTS IN BARGAINING WITH THEIR EMPLOYER. IF THE UNION FAILS IN THIS RESPECT, THE EMPLOYEES MAY SEEK TO RID THEMSELVES OF THAT UNION SO THAT THEY MAY BE FREE TO SELECT ANOTHER BARGAINING AGENT OR TO ENGAGE IN INDIVIDUAL BARGAINING WITH THE EMPLOYER WHICH MIGHT OTHERWISE BE RENDERED DIFFICULT OR EVEN IMPOSSIBLE BY SECTION 53 [NOW SECTION 59] OF THE ACT. IN THE CIRCUMSTANCES SET FORTH IN THE SECTION, THE EMPLOYER MAY ALSO SEEK A DECLARATION TERMINATING BARGAINING RIGHTS OF THE UNION. HIS PURPOSE IN MAKING SUCH A DECLARATION MAY BE THAT HE WISHES TO ALTER RATES OF WAGES OR OTHER WORKING CONDITIONS WHICH HE IS INHIBITED FROM DOING BECAUSE OF THE PROVISIONS OF SECTION 53; OR HE MAY WISH TO AVOID THE RISK OF PROSECUTION SHOULD HE REFUSE TO BARGAIN WITH A TRADE UNION

THAT HAS "SLEPT ON ITS RIGHTS" FOR A LONG PERIOD OF TIME, WHERE HE IS CONVINCED THAT THE UNION NO LONGER REPRESENTS HIS EMPLOYEES; OR HE MAY WISH TO ACCORD RECOGNITION TO ANOTHER UNION WHICH HAS SATISFIED HIM THAT IT DOES NOW REPRESENT HIS EMPLOYEES, A COURSE WHICH HE IS PROHIBITED FROM ADOPTING SO LONG AS THE BARGAINING RIGHTS OF THE OTHER UNION SUBSIST.

IN THE INSTANT CASE THERE IS NO SUGGESTION IN THE EVIDENCE THAT THE APPLICANT EMPLOYER HAS BEEN PREJUDICED IN ANY WAY, OR THAT ANY OF THE CONSIDERATIONS MENTIONED IN THE PASSAGE QUOTED APPLY HERE. REFERENCE MAY ALSO BE MADE TO THE DOMINION STORES LIMITED CASE, (1956) C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16047, WHERE THE BOARD STATED:

THE PURPOSE OF SECTION 43 [NOW SECTION 45] OF THE ACT IS TO PROTECT THE EMPLOYEES AND, IN A PROPER CASE, THE EMPLOYER AGAINST A UNION WHICH STAKES OUT A CLAIM TO REPRESENT CERTAIN EMPLOYEES AND THEN TAKES NO STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES. HOWEVER, THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD. SECTION 43 SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 [NOW SECTION 11] OF THE ACT, BUT RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO BRING THAT FACT TO THE ATTENTION OF THE BOARD SO THAT THE BOARD MAY CALL UPON THE UNION TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE. IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY.

SECTION 45(1) CONFERS NO "RIGHT" UPON AN APPLICANT BEYOND THE RIGHT TO MAKE THE APPLICATION IN WHICH THE TRADE UNION MAY BE CALLED UPON TO EXPLAIN DELAY IN BARGAINING.

5. THIS IS NOT A CASE IN WHICH THE UNION CAN BE SAID TO HAVE "STAKED OUT A CLAIM" WITH RESPECT TO EMPLOYEES WHOM IT HAS THEN FAILED TO REPRESENT. ON THE CONTRARY, THE UNION, ALTHOUGH IT MAY HAVE FAILED TO COMPLY WITH THE LETTER OF SECTION 11, HAS, WITHIN THE TIME LIMITS THERE SET OUT, SOUGHT TO BARGAIN ON BEHALF OF THE EMPLOYEES IN THE BARGAINING UNIT. THERE HAVE BEEN CASES COMING UNDER SECTION 45 IN WHICH THE BOARD HAS DETERMINED THAT THE BARGAINING RIGHTS OF A TRADE UNION SHOULD BE TERMINATED FORTHWITH, THE UNION HAVING BEEN UNABLE TO GIVE A SATISFACTORY EXPLANATION FOR ITS FAILURE TO BARGAIN OR TO GIVE NOTICE. REFERENCE MAY BE MADE TO THE VANSER INVESTMENTS LIMITED CASE, BOARD FILE NO. 9345-64-R, AND TO THE DEERFIELD PLASTICS LIMITED CASE, BOARD FILE NO. 13874-67-R, (APPLICATION UNDER SECTION 45(1)).

6. IN THE INSTANT CASE, THE BOARD IS OF OPINION THAT IT OUGHT NOT TO EXERCISE ITS DISCRETION TO ISSUE THE DECLARATION SOUGHT. AS TO THE SPEED WITH WHICH THIS APPLICATION WAS BROUGHT, REFERENCE MAY BE MADE TO THE STARK TRUCK SERVICES (LONDON) LIMITED CASE, BOARD FILE No. 8885-64-R, AND TO THE HOLLEY ELECTRIC LIMITED CASE, O.L.R.B. MONTHLY REPORTS, MAY 1965, P. 136.

7. FOR THE FOREGOING REASONS THE APPLICATION IS DISMISSED.

13813-67-R: THE LITHOGRAPHIC AND LETTERPRESS EMPLOYEES OF SUMNER PRINTING & PUBLISHING CO. LTD., AND (WINDSOR PLATEMAKERS LTD.) (APPLICANT) V. WINDSOR PRINTING PRESSMEN & ASSISTANTS' UNION, LOCAL 274 (RESPONDENT) V. SUMNER PRINTING & PUBLISHING COMPANY LIMITED (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: JOHN W. O'GRADY FOR THE APPLICANT, IAN SCOTT AND PURDY CHURCHILL FOR THE RESPONDENT, AND GORDON S. NISBET AND R. ROSENTHAL FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 28, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT. IN AN APPLICATION OF THIS SORT, IT IS INCUMBENT UPON THE APPLICANT, PURSUANT TO SECTION 43(3) OF THE LABOUR RELATIONS ACT, TO SATISFY THE BOARD THAT "NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING - - - THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION". IN THE INSTANT CASE, THERE ARE TWELVE PERSONS IN THE EMPLOY OF THE INTERVENER IN THE BARGAINING UNIT. THE QUESTION WHETHER "THE BARGAINING UNIT" REFERRED TO IN SECTION 43 CONSISTS SOLELY OF THE EMPLOYEES OF THE INTERVENER WILL BE DEALT WITH BELOW. AS TO THE TWELVE PERSONS MENTIONED, EVIDENCE WAS SUBMITTED WITH RESPECT TO ELEVEN OF THESE, AND AT THE HEARING OF THIS MATTER DOCUMENTS IN SUPPORT OF THE APPLICATION RELATING TO SIX OF THESE WERE SUFFICIENTLY IDENTIFIED.

2. THE RESPONDENT CALLED EVIDENCE BY WHICH IT SOUGHT TO ESTABLISH THAT THE EMPLOYEES STATEMENTS OF DESIRE WERE CONDITIONAL UPON THE CERTIFICATION OF ANOTHER TRADE UNION TO REPRESENT THEM. THE EVIDENCE, HOWEVER, DOES NOT SUPPORT THE ALLEGATION; IT SHOWS ONLY THAT THE MOTIVE OF THE EMPLOYEES WAS TO REPLACE THE PRESENT BARGAINING AGENT BY ANOTHER. NO QUALIFICATION APPEARS UPON THE FACE OF THE STATEMENTS, AND, ON THE EVIDENCE, NONE CAN BE READ IN TO THOSE STATEMENTS.

3. A MORE DIFFICULT QUESTION IS WHETHER THE BARGAINING UNIT CONSISTS OF EMPLOYEES OF MORE THAN ONE EMPLOYER. THE RESPONDENT IS PARTY TO A COLLECTIVE AGREEMENT WITH "THE EMPLOYING PRINTERS OF THE CITY OF WINDSOR", DESCRIBED IN THE AGREEMENT AS "THE EMPLOYER". THE AGREEMENT IS SIGNED

SEPARATELY ON BEHALF OF SEVEN EMPLOYER FIRMS IN THE PRINTING BUSINESS, AND ONE OF THESE IS THE INTERVENER. THE QUESTION WHICH HAS BEEN RAISED IS WHETHER THE COLLECTIVE AGREEMENT IS MADE WITH RESPECT TO ONE BARGAINING UNIT CONSISTING OF EMPLOYEES OF ALL SEVEN EMPLOYERS (AS THE RESPONDENT AND INTERVENER CONTEND), OR WHETHER IT IS MADE WITH RESPECT TO SEVEN BARGAINING UNITS EACH CONSISTING OF EMPLOYEES OF ONE OF THE EMPLOYERS REFERRED TO. IT WAS NOT SUGGESTED THAT THE SEVEN FIRMS ARE ENGAGED IN ANY JOINT ENTERPRISE. WE ARE UNABLE TO CONCLUDE THAT THE TERM "THE EMPLOYER", AS IT IS USED IN THE COLLECTIVE AGREEMENT WITH RESPECT TO THESE FIRMS, IS FOR ANY PURPOSE OTHER THAN CONVENIENCE OF REFERENCE. IT IS OUR CONCLUSION THAT THE DOCUMENT BEFORE US CONSTITUTES THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND EACH OF THE EMPLOYERS THEREIN NAMED. THUS "THE BARGAINING UNIT" MATERIAL IN THE INSTANT CASE IS A UNIT OF EMPLOYEES OF THE INTERVENER.

4. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON NOVEMBER 9TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

5. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE INTERVENER. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF THE INTERVENER ENGAGED IN ITS PRESSROOMS, INCLUDING BUT NOT LIMITED TO PERSONS ENGAGED ON GRAVURE, OFFSET AND LETTERPRESS PRINTING PRESSES AND ASSOCIATED DEVICES, PERSONS WORKING IN CONNECTION WITH OFFSET PLATEMAKING, INCLUDING OPERATION OF CAMERAS, ALL DARKROOM WORK, NEGATIVES AND POSITIVES, STRIPPING, OPAQUING AND PLATEMAKING, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

13937-67-R: GRAND UNION HOTEL (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.



APPEARANCES AT HEARING: J. K. SIMS, Q.C., ED ALTER, AND REG HILLS FOR THE APPLICANT, H. BUCHANAN FOR THE RESPONDENT, AND NO-ONE APPEARING FOR THE OBJECTOR.

DECISION OF THE BOARD:

DECEMBER 20, 1967.

1. THIS IS AN APPLICATION UNDER SECTION 45(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.
2. THE RESPONDENT WAS CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD ON MARCH 19TH, 1964, FOR A BARGAINING UNIT DESCRIBED AS "ALL EMPLOYEES OF THE GRAND UNION HOTEL IN KITCHENER, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF."
3. ON JULY 10TH, 1964, THE RESPONDENT AND THE APPLICANT COMMENCED NEGOTIATIONS WITH A VIEW TO REACHING A COLLECTIVE AGREEMENT. FOLLOWING THE RESPONDENT'S REQUEST FOR CONCILIATION SERVICES, MR. W. B. DAVIS WAS APPOINTED CONCILIATION OFFICER ON JULY 15TH, 1964.
4. MR. DAVIS MADE SEVERAL UNSUCCESSFUL ATTEMPTS TO ARRANGE MEETINGS BETWEEN THE PARTIES THE LAST OF WHICH WAS SCHEDULED FOR AUGUST 12TH, 1964, THE FACT IS, HOWEVER, THAT THE PARTIES NEVER DID MEET WITH MR. DAVIS.
5. IN SEPTEMBER OF 1967 THE RESPONDENT WROTE TO THE APPLICANT REQUESTING A MEETING FOR THE PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT.
6. ON OCTOBER 24TH, 1967, THE RESPONDENT WROTE TO THE MINISTER AGAIN REQUESTING CONCILIATION. THE REQUEST WAS DENIED ON THE GROUNDS THAT A PREVIOUS APPLICATION FOR CONCILIATION WAS BEING HELD IN ABEYANCE.
7. ON NOVEMBER 2ND, 1967, MR. MCGUIRE, A CONCILIATION OFFICER, ADVISED THE APPLICANT THAT MR. DAVIS'S ASSIGNMENT HAD BEEN TRANSFERRED HAD BEEN TRANSFERRED TO HIM. A MEETING WAS ARRANGED BETWEEN MR. MCGUIRE, THE APPLICANT, AND THE RESPONDENT ON NOVEMBER 15TH, 1967, AT WHICH THE APPLICANT TOOK THE POSITION THAT IT WAS ENTITLED TO A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.
8. THE DECLARATION SOUGHT BY THE APPLICANT UNDER SECTION 45(2) OF THE ACT CANNOT BE MADE UNLESS THE APPLICATION IS TIMELY HAVING REGARD TO THE PROVISIONS OF SECTION 46 OF THE ACT. THE RELEVANT PORTIONS OF SECTION 46 ARE AS FOLLOWS:

"(1) SUBJECT TO SUBSECTION 3, WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT, NO APPLICATION FOR CERTIFICATION OR A BARGAINING AGENT OF, OR FOR A DECLARATION THAT A TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE UNTIL,

- (A) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR;  
OR
- (B) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD; OR
- (C) SIX MONTHS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE OF A REPORT OF THE CONCILIATION OFFICER THAT THE DIFFERENCES BETWEEN THE PARTIES CONCERNING THE TERMS OF A COLLECTIVE AGREEMENT HAVE BEEN SETTLED,

AS THE CASE MAY BE. 1966, c. 76, s. 17(1)."

9. IN THE INSTANT CASE, AS ALREADY INDICATED, THE MINISTER APPOINTED A CONCILIATION OFFICER. HOWEVER, NONE OF THE PREREQUISITES FOR THE ISSUANCE OF A DECLARATION REQUIRED UNDER SUBSECTION (1) (A), (B), AND (C) OF SECTION 46 HAVE BEEN FULFILLED. THAT BEING THE CASE, THE APPLICATION IS UNTIMELY AND IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

12953-67-U: AUBIN PLUMBING & HEATING LIMITED (APPLICANT) V. MARCEL ROUSSEAU, WILLIAM MALLETTE, AURELE MALLETTE, EMILE GOUDREAU, TOM PETRYNA, JOSEPH GASCON, NORM BOULARD, WAYNE MITCHELL, AURELE LALANDE, GERRY MORIN, ROGER LALONDE (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: LLOYD J. VALIN, Q.C., AND J. AUBIN FOR THE APPLICANT, AND R. JAMES FOR THE RESPONDENTS.

DECISION OF THE BOARD: DECEMBER 7, 1967.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT THE NAMED RESPONDENTS ENGAGED IN AN UNLAWFUL STRIKE.
2. HAVING REGARD TO THE REPRESENTATIONS OF COUNSEL FOR THE APPLICANT AT THE HEARING, THE APPLICATION IS DISMISSED IN SO FAR AS IT RELATES TO WILLIAM MALLETT, AURELE MALLETT AND TOM PETRYNE.
3. THE EVIDENCE CLEARLY ESTABLISHES:
  - (1) THAT THE APPLICANT AND LOCAL 800 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, FOR CONVENIENCE HEREINAFTER REFERRED TO AS "LOCAL 800", ARE BOUND BY THE TERMS OF A COLLECTIVE AGREEMENT BETWEEN LOCAL 800 AND THE MECHANICAL CONTRACTORS OF SUDBURY AND DISTRICT, EFFECTIVE JANUARY 1, 1967 UNTIL APRIL 30, 1969;
  - (2) THAT THE NAMED RESPONDENTS, WHEN EMPLOYED BY THE APPLICANT AT ITS FALCONBRIDGE SLURRY PLANT PROJECT, WERE ALSO BOUND BY THE TERMS OF THE SAID AGREEMENT;
  - (3) THAT THE RESPONDENTS WERE EMPLOYEES OF THE APPLICANT ON NOVEMBER 29, 1967 AND WERE SCHEDULED TO WORK AND DID IN FACT WORK DURING THE MORNING OF THE 29TH;
  - (4) THAT DURING THE AFTERNOON OF NOVEMBER 29, ROUSSEAU, GOUDREAU, GASCON, BOULARD, MITCHELL, AURELE LALANDE, MORIN AND ROGER LALONDE, HEREINAFTER REFERRED TO COLLECTIVELY AS "THE RESPONDENTS", ALTHOUGH SCHEDULED TO WORK, REFUSED TO WORK OR TO CONTINUE TO WORK IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING;

- (5) THAT ON THE MORNING OF NOVEMBER 30, THE SAID RESPONDENTS, ALTHOUGH REPORTING FOR WORK AT 7:30 A.M., REFUSED TO COMMENCE WORK, AGAIN IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING;
- (6) THAT BETWEEN 9:00 AND 9:15 A.M. MR. AUBIN, THE PRESIDENT OF THE APPLICANT, AND MR. JAMES, THE BUSINESS AGENT OF LOCAL 800, MET WITH THE RESPONDENTS IN THE LUNCH ROOM ON THE PROJECT IN QUESTION, AT WHICH TIME DISCUSSIONS TOOK PLACE RELATIVE TO CERTAIN GRIEVANCES WHICH THE RESPONDENTS BELIEVED THEY HAD: AND
- (7) THAT THE DISCUSSIONS FAILED TO RESOLVE ALL THE GRIEVANCES AND BETWEEN 10:00 A.M. AND 10:30 A.M. THE RESPONDENTS LEFT THE JOB SITE AND, AS AT THE DATE OF THE HEARING, HAD NOT RETURNED TO WORK SAVE POSSIBLY FOR TWO PERSONS, GASCON AND GOUDREAU.

4. THE DEFENCE SOUGHT TO SHOW THAT THE RESPONDENTS LEFT THE JOB BECAUSE THEY BELIEVED THE APPLICANT WAS GOING TO SHUT THE WHOLE PROJECT DOWN. IT WAS FURTHER SUBMITTED THAT THE MEN DID NOT STRIKE BUT, INSTEAD, QUIT THEIR JOBS, REGISTERED AT THE OFFICE OF LOCAL 800 ON THE "OUT-OF-WORK" LIST AND COULD NOT RETURN TO WORK UNLESS REFERRED BY THE UNION, WHICH, IN TURN, COULD NOT ISSUE A REFERRAL SLIP UNLESS THERE WAS A REQUEST FROM THE APPLICANT. NONE WAS POSTED ON THE LOCAL'S BULLETIN BOARD. AS TO THE LAST POINT IT IS QUITE CLEAR THAT ON NOVEMBER 30, THE APPLICANT SENT A TELEGRAM TO MR. JAMES REQUESTING THAT HE INSTRUCT "OUR EMPLOYEES" TO REPORT FOR WORK AT 7:30 A.M. ON DECEMBER 1ST. A SIMILAR TELEGRAM WAS SENT TO EACH OF THE RESPONDENTS. NO ACTION WAS TAKEN ON THESE TELEGRAMS.

5. ONLY TWO OF THE RESPONDENTS, BOULARD AND AURELE LALANDE, WERE PRESENT AT THE HEARING. EACH TESTIFIED THAT THEY WERE TOLD THAT ALL OF THE EMPLOYEES WERE GOING TO BE LAID OFF. MR. AUBIN AND A FOREMAN, GILBEAU, TESTIFIED THAT THE MEN WERE TOLD THAT UNLESS THE STOPPAGES WERE SOLVED, THE GENERAL CONTRACTOR OR OWNER, FALCONBRIDGE NICKEL MINES, WOULD PROBABLY TAKE THE APPLICANT OFF THE JOB. IT IS QUITE CLEAR THAT THE RESPONDENTS WERE REFUSING TO WORK BECAUSE, INTER ALIA, THEIR SHOP STEWARD HAD BEEN LAID OFF. NONE OF THE RESPONDENTS WOULD ACCEPT AN APPOINTMENT AS A SHOP STEWARD, AND THEY WOULD NOT WORK WITHOUT ONE ON THE JOB. IN OTHER WORDS, THEY WERE REFUSING TO WORK UNLESS THE SHOP STEWARD WAS RECALLED. MR. AUBIN WAS NOT PREPARED TO TAKE THIS ACTION. THERE WAS NO PROVISION IN THE COLLECTIVE AGREEMENT PROVIDING FOR "SUPER-SENIORITY" FOR SHOP STEWARDS. ON THE OTHER HAND, AUBIN WAS DOING EVERYTHING HE COULD AT THE MEETING ON THE 30TH TO PERSUADE THE MEN TO GO BACK TO WORK. IN OUR VIEW, ALL THE CIRCUMSTANCES SUPPORT THE VERSION OF AUBIN AND GILBEAU AS BEING THE MORE CREDIBLE ONE. WE HAVE NO HESITATION IN FINDING THAT THE REASON THE



RESPONDENTS LEFT THE JOB ON THE 30TH BETWEEN 10:00 AND 10:30 WAS THAT THE APPLICANT WOULD NOT RECALL THE SHOP STEWARD LAID OFF THE PREVIOUS DAY.

6. WE TURN NOW TO THE ALLEGATION THAT THE RESPONDENTS OR SOME OF THEM QUIT THEIR JOBS. BOTH BOULARD AND AURELE LALANDE TESTIFIED THAT THEY QUIT THE JOB, AND MR. AUBIN TESTIFIED THAT ROGER LALONDE TOLD HIM AT THE JOB SITE THAT HE WAS QUITTING. THERE WAS EVIDENCE THAT THE RESPONDENTS OR SOME OF THEM SIGNED THE "OUT OF WORK" REGISTER AND THE RESPONDENTS' REPRESENTATIVE ARGUED THAT THIS MEANT THOSE SIGNING HAD QUIT. WE ARE NOT DISPOSED TO DRAW THIS INFERENCE FROM THE MERE SIGNING OF A REGISTER. FURTHERMORE, IT IS CLEAR THAT BOULARD WAS PREPARED TO RETURN TO WORK IF THE SHOP STEWARD WAS RE-HIRED BECAUSE, IN HIS OWN WORDS, "EVERYTHING WOULD THEN BE SETTLED". TWO OTHERS, GASCON AND GOUDREULT, REQUESTED MR. AUBIN TO PUT IN A RECALL FOR THEM AND IT WOULD APPEAR FROM THIS AND OTHER EVIDENCE THAT THEY MAY HAVE RETURNED TO WORK ON THE DAY OF THE HEARING. IN THESE CIRCUMSTANCES AND APART, PERHAPS, FROM AURELE LALANDE, THERE IS NO REAL EVIDENCE THAT THE RESPONDENTS QUIT IN THE SENSE OF HAVING NO INTENTION OF RETURNING TO THE JOB. IN COMING TO THIS CONCLUSION WE HAVE TAKEN INTO ACCOUNT THE FACT THAT THE RESPONDENTS "QUIT" THEIR JOBS AFTER WORK ON SATURDAY, NOVEMBER 18, BUT RETURNED TO WORK ON WEDNESDAY, NOVEMBER 22, EXCEPT FOR AURELE LALANDE, WHO WAS ILL.

7. IN ANY EVENT, IT IS QUITE CLEAR THAT THE RESPONDENTS, INCLUDING LALANDE, IN LEAVING THE JOB ON NOVEMBER 30, WERE ACTING IN CONCERT OR IN COMBINATION OR IN ACCORDANCE WITH A COMMON UNDERSTANDING THAT THEY WOULD NOT WORK UNLESS THE SHOP STEWARD WAS RECALLED. WHILE NO PICKET LINE WAS ESTABLISHED, WE HAVE NO HESITATION IN FINDING THAT SUCH CONDUCT CONSTITUTES A STRIKE WITHIN THE MEANING OF SECTION 1(1) OF THE LABOUR RELATIONS ACT.

8. HAVING REGARD, THEN, TO THE ABOVE CONSIDERATIONS, THE BOARD DECLARES THAT THE RESPONDENTS ENGAGED IN A STRIKE AT THE APPLICANT'S FALCONBRIDGE SLURRY PLANT PROJECT, THAT THE STRIKE COMMENCED AFTER THE LUNCH PERIOD ON WEDNESDAY, NOVEMBER 29, 1967, THAT THE STRIKE HAS CONTINUED UP TO THE DAY OF THE HEARING OF THE MATTER AND THAT THE SAID STRIKE ENGAGED IN BY THE RESPONDENTS, MARCEL ROUSSEAU, ÉMILE GOUDREULT, JOSEPH GASCON, NORM BOULARD, WAYNE MITCHELL, AURELE LALANDE, GERRY MORIN AND ROGER LALONDE, IS CONTRARY TO SECTION 54(1) OF THE LABOUR RELATIONS ACT AND IS THEREFORE UNLAWFUL.

9. AS NOTED ABOVE, IT WOULD APPEAR THAT GASCON AND GOUDREULT MAY HAVE RETURNED TO WORK THE DAY OF THE HEARING. WHILE IT IS NOT THE NORMAL PRACTICE OF THE BOARD TO ISSUE A DECLARATION AGAINST EMPLOYEES WHO HAVE RETURNED TO WORK BY THE DATE OF THE HEARING, IT IS CLEAR FROM THE EVIDENCE THAT TWO OTHER STOPPAGES OCCURRED WITHIN A TWO-WEEK PERIOD OF THE PRESENT STOPPAGE. ONE WAS A REFUSAL TO COMMENCE WORK FOR A SHORT PERIOD OF TIME UNTIL A GRIEVANCE WAS ADJUSTED. THE OTHER INVOLVED A CASE OF "QUITTING", AGAIN OVER A GRIEVANCE, FOR A TWO-

DAY PERIOD. THIS EVIDENCE SHOWS A PATTERN OF UNLAWFUL WORK STOPPAGES SUCH AS TO BRING THE CASE WITHIN ONE OF THE EXCEPTIONS TO THE BOARD'S GENERAL POLICY AS SET OUT IN THE McNAMARA-RAYMOND CASE, 1961 C.L.L.C., 914, C.L.S. 76-722.

INDEXED ENDORSEMENT - SECTION 63

13965-67-M: GUTSFELD'S WELDING EXPERT IN BUILDUP & HARDFACING 13 LONDON ST. N. HAMILTON, ONT. PHONE LI 7-3056 (COMPLAINANT) V. UNITED STEELWORKERS UNION OF AMERICA (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 8, 1967.

1. THIS IS A COMPLAINT UNDER SECTION 63 OF THE LABOUR RELATIONS ACT, WHICH PROVIDES AS FOLLOWS:

EVERY TRADE UNION SHALL UPON THE REQUEST OF ANY MEMBER FURNISH HIM, WITHOUT CHARGE, WITH A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR CERTIFIED BY ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS TO BE A TRUE COPY, AND, UPON THE COMPLAINT OF ANY MEMBER THAT THE TRADE UNION HAS FAILED TO FURNISH SUCH A STATEMENT TO HIM, THE BOARD MAY DIRECT THE TRADE UNION TO FILE WITH THE REGISTRAR, WITHIN SUCH TIME AS THE BOARD DETERMINES, A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR VERIFIED BY THE AFFIDAVIT OF ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS AND TO FURNISH A COPY OF SUCH STATEMENT TO SUCH MEMBERS OF THE TRADE UNION AS THE BOARD IN ITS DISCRETION DIRECTS, AND THE TRADE UNION SHALL COMPLY WITH SUCH DIRECTION ACCORDING TO ITS TERMS.

2. IT IS DIFFICULT TO SEE HOW THE COMPLAINANT "GUTSFELD'S WELDING" HAS ANY STATUS TO FILE A COMPLAINT BUT, EVEN ASSUMING THAT THE COMPLAINANT IS IN FACT A. GUTSFELD, WHO SIGNED IT, HE WOULD NOT APPEAR TO BE IN A POSITION TO MAKE A COMPLAINT SINCE HE IS NOT A MEMBER OF THE RESPONDENT TRADE UNION ALTHOUGH HE ALLEGES THAT HE WAS PREVIOUSLY A MEMBER.

3. FURTHER, IT DOES NOT APPEAR FROM THE OTHER STATEMENTS IN THE COMPLAINT THAT THE COMPLAINANT DESIRES AN AUDITED FINANCIAL

STATEMENT BUT, RATHER, IS SEEKING SOME OTHER FORM OF RELIEF. THE FOLLOWING STATEMENTS ARE TAKEN FROM THE COMPLAINT:

4. STATEMENT AS TO THE EFFORTS MADE BY THE COMPLAINANT TO OBTAIN FROM THE RESPONDENT A COPY OF ITS AUDITED FINANCIAL STATEMENT:

"IN ATTENDANCE OF SEVERALE MEETINGS WITH THE RESPONDENTS I HAVE REQUESTED MY RIGHTS UNTIL FURTER ENTRANCES WAS REJECTED. (AT THE MEETINGS IT WAS REFERED ON TO ME, I SHALL SAY TO HAVE SUFFERED FROM AN MENTALY STRAIN BECAUSE OF THE MATTERS INVOLVED AND AT ONE OTHER MEETING I FIND MYSELF THREATENED WITH A BEATING IN ORDER TO REVERSE ONE OF MY STATINGS."

5. OTHER RELEVANT STATEMENTS:

"FROM THE RESPONDENTS I WISH TO RECEIVE BAK MY CANADIAN CITIZENSHIP CERTIFICATE, MY PAYD-UP INSURANCE CERTIFICATE AND ANY OTHER RIGHT?-ENTITLED FOR, THE RESPONDENTS MAY KEEP THEM ON THERE RECORD FOR FURTHER GLORIOUS VICTORY'S OVER NOT IN CANADA BORN CANADIANS AND RIGHT'S

AT PROCEEDING OF THE CASE I WILL PRESENT WRITTEN EVIDENCE IN REFER OF WHICH THE RESPONDENTS WILL-BY FOUND GUILTY TO COMPENSATE FOR MY LOSSESS RECORDED WITH THE ONTARIO WORKMEN'S COMPENSATIONS BOARD CLAIM # 5479557 THIS RECEIVEABLE ACCOUNT I DO NOT REJECT TO RECEIVE."

IN AN APPLICATION UNDER SECTION 63 IT IS QUITE CLEAR THAT THE BOARD HAS NO JURISDICTION TO DEAL WITH ANY OF THE MATTERS REFERRED TO ABOVE.

4. IN THE RESULT, THEREFORE, THE COMPLAINT DOES NOT, IN THE OPINION OF THE BOARD, MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

13686-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. CANADIAN MOULDINGS LTD. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS  
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: K. SIMPSON, C. ANDERSON FOR THE APPLICANT AND H. J. O'BRIEN, Q.C., D. LAMBERT, J. HENLEY FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 4, 1967.

1. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.
2. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSON, GEORGE MANNINGER, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT AND ACCORDINGLY REQUESTS THAT HE BE REINSTATED TO HIS FORMER POSITION WITH THE RESPONDENT WITH COMPENSATION. THE RESPONDENT DENIES THE COMPLAINT.
3. THE RESPONDENT IS A MANUFACTURER OF ALUMINUM PRODUCTS IN CHATHAM AND HAS FOR ITS OWN PURPOSES DIVIDED ITS PLANT INTO VARIOUS DEPARTMENTS INCLUDED IN WHICH ARE THE EXTRUSION AND BILLET DEPARTMENTS. GEORGE MANNINGER HAD BEEN EMPLOYED BY THE RESPONDENT FOR ABOUT 2½ YEARS PRIOR TO BEING LAID OFF AND WORKED AS A LEAD HAND IN THE EXTRUSION DEPARTMENT UNTIL JUNE 1967 WHEN HE BID FOR AND OBTAINED A JOB AS A LIFT TRUCK DRIVER IN THE BILLET DEPARTMENT. THE LATTER POSITION WAS LOWER RATED AND PAID LESS THAN THE FORMER.
4. MR. MANNINGER'S EVIDENCE WAS THAT ON WEDNESDAY, SEPTEMBER 20TH HE ATTENDED A MEETING CALLED FOR THE PURPOSES OF DISCUSSING UNION ORGANIZATION AT THE RESPONDENT'S PLANT AND ON THE FOLLOWING EVENING HE CALLED ON OTHER EMPLOYEES TO OBTAIN THEIR SIGNATURES ON UNION CARDS. ON FRIDAY, SEPTEMBER 22ND AT APPROXIMATELY 3:45 P.M. A NOTICE WAS POSTED AT THE PLANT WHICH GAVE NOTICE OF LAY OFF TO SOME 30 EMPLOYEES OF THE RESPONDENT. HIS NAME DID NOT APPEAR ON THAT LIST. THE FOLLOWING DAY, HOWEVER, MR. LAMBERT, THE PLANT MANAGER, ADVISED HIM BY TELEPHONE THAT HE WAS ALSO LAID OFF BECAUSE HE HAD LOW SENIORITY IN THE BILLET DEPARTMENT AND SUGGESTED THAT HE LOOK FOR OTHER EMPLOYMENT. MR. MANNINGER STATED THAT HE HAD NEVER RECEIVED ANY COMPLAINTS ABOUT HIS WORK AND THAT HIS UNDERSTANDING WAS THAT THERE WAS PLANT SENIORITY AND NOT DEPARTMENT SENIORITY SO THAT HE FELT THAT HE SHOULD HAVE BEEN RETAINED IN PREFERENCE TO MORE JUNIOR EMPLOYEES, SOME OF WHOM HE CONTENDED WERE STILL WORKING IN THE EXTRUSION DEPARTMENT. HE ATTEMPTED TO ESTABLISH THAT THE RESPONDENT'S REASONS FOR THE LAY OFF WERE DOUBTFUL AS THE PLANT CONTINUED WITH CERTAIN OVERTIME WORK. HE FURTHER CONTENDED THAT IT WAS AS A CONSEQUENCE OF HIS ACTIVITIES ON BEHALF OF THE COMPLAINANT THAT HE WAS DISCHARGED.
5. BRIEFLY, THE RESPONDENT'S EVIDENCE INDICATES THAT THERE WAS A DEPARTMENT SENIORITY SYSTEM IN THE PLANT AS SHOWN ON TWO SENIORITY LISTS (FILED AS EXHIBITS) ONE DATED JULY 13, 1966 AND THE OTHER SEPTEMBER 15TH, 1967. IT IS CLEAR THAT AT LEAST THE LIST DATED JULY 13TH, 1966 WAS POSTED IN THE PLANT AND ON THIS LIST MR. MANNINGER WAS SHOWN WITH SENIORITY IN THE EXTRUSION DEPARTMENT DATING FROM JUNE 21ST, 1965. ON THE OTHER LIST HE WAS SHOWN WITH SENIORITY IN THE SCRAP AND BILLET DEPARTMENT DATING FROM JUNE 19TH, 1967.



A SEASONAL LABOUR FORCE ADJUSTMENT TOGETHER WITH NEW MATERIALS HANDLING EQUIPMENT IN THE PLANT NECESSITATED A PLANT WIDE REDUCTION IN THE WORK FORCE AND AS A RESULT, EMPLOYEES WITH LOW SENIORITY IN EACH DEPARTMENT WERE LAID OFF. EVEN THOUGH MR. MANNINGER HAD WORKED FOR SOME TIME IN THE PLANT HE HAD LOW SENIORITY IN THE BILLET DEPARTMENT AND WAS THEREFORE AFFECTED BY THE LAY OFF.

6. MR. HACKETT, A GENERAL FOREMAN, TESTIFIED THAT MR. MANNINGER HAD BEEN HIS LEAD HAND FOR A TIME IN THE EXTRUSION DEPARTMENT AND HE CONSIDERED HIM TO BE A GOOD WORKMAN. HE STATED THAT MT. MANNINGER HAD HAD SOME DIFFICULTY IN THE HANDLING OF OTHER EMPLOYEES IN THAT DEPARTMENT; HOWEVER, HE HAD BEEN CONSIDERED BUT TURNED DOWN FOR THE POSITION OF FOREMAN. MR. HACKETT FURTHER STATED THAT MR. MANNINGER WAS ASKED TO RETURN TO THE EXTRUSION DEPARTMENT IN AUGUST BUT THAT HE DECLINED THE OFFER AS HE DID NOT WISH TO GO ON SHIFT WORK. MR. HACKETT EXPLAINED THAT OVERTIME HAD BEEN WORKED IN THE EXTRUSION DEPARTMENT ON SATURDAYS TO TEST NEW PROCEDURES IN THAT DEPARTMENT, TO INCREASE ITS EFFICIENCY AND INDICATED THAT THIS OVERTIME WAS NOT PART OF THE REGULAR PLANT PRODUCTION WORK. MR. ROWLAND, MANAGER OF YARDLEY PLASTICS, WHICH IS A COMPANY ASSOCIATED WITH THE RESPONDENT, TESTIFIED THAT DURING THE WEEK FOLLOWING THE LAYOFF OF THE RESPONDENT'S EMPLOYEES, HE HAD ASKED MR. MANNINGER TO WORK FOR YARDLEY PLASTICS AND HE HAD AGREED TO START ON OCTOBER 2ND. SUBSEQUENTLY, MR. MANNINGER ADVISED MR. ROWLAND THAT HE HAD OBTAINED ANOTHER JOB AT A HIGHER RATE OF PAY AND DECLINED MR. ROWLAND'S OFFER. MR. LAMBERT TESTIFIED THAT HE WAS NOT IN CHATHAM ON WEDNESDAY OR THURSDAY OF THE WEEK OF THE LAY OFF AND DID NOT BECOME AWARE OF THE UNION ACTIVITY AT THE PLANT UNTIL THE EVENING OF FRIDAY, SEPTEMBER 22ND.

7. THE ESSENCE OF THE AGGRIEVED PERSON'S EVIDENCE IN THIS CASE IS, DURING THE WEEK ENDING SEPTEMBER 23RD HE TOOK PART IN THE COMPLAINANT'S ORGANIZING CAMPAIGN FOR THE EMPLOYEES OF THE RESPONDENT AND HE ALONG WITH OTHER EMPLOYEES WERE LAID OFF BY THE RESPONDENT AT THE END OF THAT SAME WEEK. THE COMPLAINANT INFERRED IN ARGUMENT THAT IT WAS MAINLY THOSE EMPLOYEES SUSPECTED OF UNION ACTIVITY BY THE RESPONDENT WHO WERE LAID OFF BUT THIS WAS NOT SUBSTANTIATED IN ANY WAY BY THE EVIDENCE. IT IS TO BE NOTED THAT THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE RESPONDENT WAS AWARE OF MR. MANNINGER'S MEMBERSHIP IN OR ACTIVITIES ON BEHALF OF THE COMPLAINANT OR INDEED THAT IT KNEW OF THE COMPLAINANT'S ORGANIZING CAMPAIGN UNTIL AFTER THE LAY OFF WAS IN EFFECT. THE PRIMARY ONUS OF PROOF IN CASES OF THIS NATURE LIES ON THE COMPLAINANT TO SATISFY THE BOARD BY SUBSTANTIAL EVIDENCE THAT THE AGGRIEVED PERSON WAS DEALT WITH BY HIS EMPLOYER CONTRARY TO THE LABOUR RELATIONS ACT. THIS DOES NOT MEAN THAT DIRECT EVIDENCE MUST BE USED TO PROVE EVERY FACT IN ISSUE. THE BOARD MAY DRAW REASONABLE INFERENCES FROM THE EVIDENCE PRESENTED AT THE HEARING. IT HAS, HOWEVER, BEEN STATED BY THIS BOARD IN PREVIOUS CASES THAT MERE SUSPICION OF WRONG DOING IS NOT BY ITSELF SUFFICIENT EVIDENCE TO SHIFT THE ONUS TO THE RESPONDENT TO ANSWER FOR ITS ACTIONS. IN THE CIRCUMSTANCES OF THE INSTANT CASE IT IS PERTINENT TO NOTE WHAT THE BOARD SAID IN THE NATIONAL AUTOMATIC VENDING CASE, C.L.S. 76-935 AT P. 76-937:

"THE BOARD MUST ALSO BE CIRCUMSPECT TO PREVENT THE INNOCENT EMPLOYER FROM BEING VICTIMIZED BY INVENTED OR IMAGINARY CLAIMS OF DISCRIMINATION LAUNCHED MERELY BECAUSE THE EMPLOYEE'S DISCHARGE IS COINCIDENTAL WITH THE UNION'S ORGANIZATIONAL CAMPAIGN. IN THIS RESPECT THERE MUST, OF COURSE, BE EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCES OR DIRECT EVIDENCE THAT THE EMPLOYEE HAS BEEN DISCHARGED CONTRARY TO THE ACT."

8. ASSUMING HOWEVER, FOR THE PURPOSES OF THIS MATTER, THAT THE COMPLAINANT HAD SATISFIED THE BOARD IN RESPECT TO ITS PRIMARY OBLIGATION, WE ARE OF THE OPINION THAT THE RESPONDENT GAVE A REASONABLE CREDIBLE EXPLANATION CONCERNING THE CIRCUMSTANCES LEADING UP TO AND SURROUNDING THE LAY OFF OF THE AGGRIEVED PERSON TO CONSTITUTE A SUFFICIENT ANSWER TO THE COMPLAINT.

9. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES PRESENTED AT THE HEARING, THE BOARD IS NOT SATISFIED THAT THE AGGRIEVED PERSON WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

10. THE COMPLAINT IS ACCORDINGLY DISMISSED.

13966-67-U: FRANK MAULE (COMPLAINANT) V. A.M. WOOLREY OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN TORONTO BRITISH AMERICAN OIL LTD (OIL & CHEMICAL CO LTD.) K. G. COOKE HAMILTON CANADIAN WESTINGHOUSE LTD (ELECTRICAL INDUSTRY) N.H. WAGE COPPER CLIFF INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER HAMILTON STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE SAULT STE MARIE ALGOMA STEEL CO LTD. (STEEL INDUSTRY) (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 8, 1967.

1. THIS IS A COMPLAINT FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THE RESPONDENTS HAVE DEALT WITH HIM AND OTHER NAMED AGGRIEVED PERSONS CONTRARY TO THE PROVISIONS OF SECTION 48 OF THE LABOUR RELATIONS ACT.

2. IT APPEARS FROM THE COMPLAINT THAT THE RESPONDENTS ARE EMPLOYER REPRESENTATIVES ON A COMMITTEE KNOWN AS THE GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES. IT FURTHER APPEARS THAT LABOUR IS EQUALLY REPRESENTED ON THIS COMMITTEE. IT IS ALLEGED THAT THE COMMITTEE IN QUESTION ISSUED AN INTERIM REPORT DATED MARCH 6, 1967, RECOMMENDING

THE EXCLUSION OF CRAFTSMEN IN GENERAL INDUSTRY FROM COMPULSORY CERTIFICATION. IT APPEARS, FURTHER, FROM THE COMPLAINT, THAT THE RECOMMENDATION WAS ADOPTED (PRESUMABLY BY THE MINISTER OF LABOUR) AND THAT A CERTIFICATE IS NO LONGER REQUIRED BY PERSONS PERMANENTLY EMPLOYED IN A LIMITED PURPOSE OCCUPATION IN THE ELECTRICAL TRADE IN GENERAL INDUSTRY. THIS APPARENTLY, IS THE REAL COMPLAINT OF THE AGGRIEVED PERSONS. IT SHOULD BE NOTED THAT WE ARE NOT HERE CONCERNED WITH CERTIFICATION OF A TRADE UNION UNDER THE LABOUR RELATIONS ACT BUT, RATHER, WITH TRADES DESIGNATED AS "CERTIFIED TRADES" UNDER THE APPRENTICESHIP AND TRADESMEN'S QUALIFICATION ACT, 1964.

3. IN A PREVIOUS APPLICATION INVOLVING THE SAME RESPONDENTS AND IN WHICH JAMES SPEIRS, ONE OF THE AGGRIEVED PERSONS NAMED IN THIS APPLICATION, WAS COMPLAINANT (AND IN WHICH THE PRESENT COMPLAINANT WAS NAMED AS AN AGGRIEVED PERSON) THE BOARD FOUND THAT THERE WAS NOTHING CONTAINED IN THE COMPLAINT WHICH IN ANY WAY SUGGESTED THAT SECTION 48 OF THE ACT HAD BEEN VIOLATED. THE PRESENT COMPLAINT, IN OUR VIEW, IS IN EXACTLY THE SAME CATEGORY AND ON THIS GROUND ALONE IS WITHOUT MERIT.

4. FURTHERMORE, THE COMPLAINT IN THE INSTANT CASE DOES NOT IN FACT SET OUT THE RELIEF WHICH THE COMPLAINANT IS SEEKING. THE COMPLAINANT REQUESTS:

- "A. THE BOARD AUTHORIZE A FIELD OFFICER TO INQUIRE INTO THIS COMPLAINT.
- B. REQUEST A HEARING BEFORE THE BOARD.
- C. CONSENT IN WRITING FROM THE BOARD TO PERMIT ME TO INSTITUTE PROSECUTION FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT."

APART FROM C, THE RELIEF WHICH THE COMPLAINANT IS SEEKING IS NOT SET OUT. THERE IS NO REASON TO APPOINT A FIELD OFFICER OR TO HOLD A HEARING WHERE THE BOARD IS NOT CALLED ON TO MAKE A DETERMINATION UNDER CLAUSE (A) OF SUBSECTION 4 OF SECTION 65. IN ADDITION, WHATEVER POWER THE BOARD MAY HAVE UNDER THE SAID CLAUSE (A), IT DOES NOT HAVE JURISDICTION IN A COMPLAINT UNDER SECTION 65 TO CONSENT TO THE INSTITUTION OF A PROSECUTION FOR AN OFFENCE UNDER THE ACT.

5. IN THE RESULT, THEREFORE, THE COMPLAINT DOES NOT, IN THE OPINION OF THE BOARD, MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46 (1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

INDEXED ENDORSEMENT - SECTION 79(2)

13633-67-M: THE BOARD OF EDUCATION FOR THE CITY OF SARNIA (APPLICANT) v.  
CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT) .

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND  
R. W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 19, 1967.

1. THE APPLICANT HAVING APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT, FOR A DETERMINATION OF THE QUESTION OF WHETHER OR NOT CHESTER BROWN, CLYDE ELLIOTT, ALBERT MAINDONALD AND JAMES RILEY ARE EMPLOYEES OF THE APPLICANT FOR THE PURPOSES OF THE ACT ON SEPTEMBER 13TH, 1967, THE BOARD'S EXAMINER CONVENED A MEETING TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS CONCERNED IN ACCORDANCE WITH THE BOARD'S DIRECTION. AT THE EXAMINER'S MEETING, THE PARTIES AGREED THAT THE EVIDENCE ADDUCED WITH RESPECT TO CLYDE ELLIOTT WAS REPRESENTATIVE OF THE DUTIES AND RESPONSIBILITIES OF CHESTER BROWN, ALBERT MAINDONALD AND JAMES RILEY, AS OF THE DATE THE APPLICATION WAS MADE.
2. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED NOVEMBER 24TH, 1967, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, AS CONTAINED IN THE LETTERS FROM THE APPLICANT DATED DECEMBER 4TH AND DECEMBER 14TH, 1967, AND THE LETTER FROM THE RESPONDENT DATED DECEMBER 11TH, 1967, THE BOARD FINDS THAT CLYDE ELLIOTT WAS PRIMARILY ENGAGED IN THE SUPERVISION OF OTHER EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT FOR 95 PER CENT OF HIS TIME AND, EXCEPT IN ISOLATED INSTANCES, DID NOT PERFORM WORK WHICH WAS PERFORMED BY SUCH EMPLOYEES. IN ADDITION, THE EVIDENCE DISCLOSED THAT MR. ELLIOTT WAS THE FIRST STEP IN THE GRIEVANCE PROCEDURE. MR. ELLIOTT ALSO HAD POWER TO MAKE EFFECTIVE RECOMMENDATIONS CONCERNING EMPLOYEES. SINCE MR. ELLIOTT HAS POWER TO MAKE EFFECTIVE RECOMMENDATIONS AND SPENDS THE MAJORITY OF HIS TIME SUPERVISING OTHER EMPLOYEES RATHER THAN PERFORMING WORK WHICH IS PERFORMED BY THE OTHER EMPLOYEES IN THE BARGAINING UNIT, AND SINCE MR. ELLIOTT IS THE FIRST STEP IN THE GRIEVANCE PROCEDURE, AS SET FORTH IN THE COLLECTIVE AGREEMENT BINDING THE PARTIES, THE BOARD ACCORDINGLY FINDS THAT AS OF THE DATE THIS APPLICATION WAS MADE, CLYDE ELLIOTT EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE OF THE APPLICANT FOR THE PURPOSES OF THE ACT.
3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF CHESTER BROWN, ALBERT MAINDONALD AND JAMES RILEY, THE BOARD ACCORDINGLY FINDS THAT CHESTER BROWN, ALBERT MAINDONALD AND JAMES RILEY EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND WERE NOT EMPLOYEES OF THE APPLICANT FOR THE PURPOSES OF THE ACT ON THE DATE THIS APPLICATION WAS MADE.



INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

13928(A)-67-JD: FOLEY CONSTRUCTION LIMITED (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL NUMBER 1758 (RESPONDENT) V. NORTHERN FLOORING COMPANY LIMITED (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: W. T. FOLEY FOR THE COMPLAINANT, F. A. ACTON AND S. G. BAKER FOR THE RESPONDENT, W. S. COOK, E. J. THOMAS AND J. K. PENDYK FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 5, 1967.

1. THE BOARD DIRECTS, PURSUANT TO SECTION 54 OF ITS RULES OF PROCEDURE AND REGULATIONS, THAT NORTHERN FLOORING COMPANY LIMITED BE ADDED AS A PARTY TO THIS PROCEEDING.
2. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WERE SERVED WITH A COPY OF THE NOTICE OF THE COMPLAINT AND OF THE BOARD HEARING ON NOVEMBER 27TH, 1967, BUT WAS NOT REPRESENTED AT THE HEARING.
3. THE COMPLAINANT IS APPLYING TO THE BOARD UNDER SECTION 66 OF THE ACT FOR AN INTERIM ORDER AND DIRECTION CONCERNING A DISPUTE ARISING OUT OF AN ASSIGNMENT OF WORK MADE BY THE COMPLAINANT.
4. IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (2) OF SECTION 66, AT THE HEARING ON NOVEMBER 27TH, 1967, THE BOARD CONSULTED WITH THE PARTIES IN ORDER TO DETERMINE WHAT INTERIM ORDER, IF ANY, SHOULD BE MADE IN THE CIRCUMSTANCES OF THE INSTANT COMPLAINT.
5. THE FOLLOWING FACTS WERE REVEALED AS A RESULT OF THE BOARD'S CONSULTATION WITH THE PARTIES. THE COMPLAINANT WAS AWARDED A CONTRACT AS THE GENERAL CONTRACTOR TO MAKE CERTAIN RENOVATIONS AND ALTERATIONS TO THE BROCKVILLE COLLEGIATE INSTITUTE. ON AUGUST 7TH, 1967, THE COMPLAINANT ENTERED INTO A CONTRACT WITH THE INTERVENER SUBCONTRACTING TO THE LATTER COMPANY THE WORK OF LAYING HARDWOOD FLOORING. THE LAYING OF HARDWOOD FLOOR IS THE ONLY WORK ENGAGED IN BY THE INTERVENER AND ACCORDING TO COUNSEL, CARPENTERS WITH PARTICULAR SKILLS ARE REQUIRED TO PERFORM THIS TYPE OF WORK.
6. THE INTERVENER IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE RESILIENT FLOOR WORKERS<sup>1</sup>, LOCAL 2965, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (HEREINAFTER REFERRED TO AS LOCAL 2965) DATED DECEMBER 1ST, 1965. BY THE RECOGNITION CLAUSE THE INTERVENER RECOGNIZES LOCAL 2965 AS EXCLUSIVE BARGAINING AGENT FOR ALL OF ITS EMPLOYEES SAVE AND EXCEPT OFFICE AND SALES STAFF. THE COLLECTIVE AGREEMENT PURPORTS TO BE PROVINCE-WIDE IN SCOPE AND ACCORDING TO ARTICLE 14, THE AGREEMENT IS RECOGNIZED BY LOCALS AND ALL DISTRICTS OF THE UNITED BROTHERHOOD OF CARPENTERS, MILLMEN AND

JOINERS OF AMERICA THROUGHOUT THE PROVINCE. NO EXPLANATION WAS GIVEN AT THE HEARING AS TO THE MANNER IN WHICH OTHER LOCALS OR DISTRICT OF THE CARPENTERS INTERNATIONAL UNION GAVE RECOGNITION TO THE SANCTITY OF THIS AGREEMENT, THE AGREEMENT ONLY BEING EXECUTED BY THE INTERVENER AND LOCAL 2965. THE DURATION CLAUSE OF THE AGREEMENT PROVIDES THAT IT IS EFFECTIVE FROM DECEMBER 1ST, 1965 TO APRIL 30TH, 1969 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

7. COUNSEL FOR THE INTERVENER ADVISED THE BOARD THAT ON PREVIOUS OCCASIONS THE INTERVENER HAD REQUESTED LOCAL 2965 TO PROVIDE THE PARTICULAR TYPE OF SKILLED CARPENTERS WHICH ARE REQUIRED TO LAY HARDWOOD FLOORS BUT THAT THE UNION HAD BEEN UNABLE TO SUPPLY SUCH CARPENTERS. IN THESE EARLIER SITUATIONS THE INTERVENER HAD HIRED CARPENTERS WITH THE REQUIRED SKILLS TO DO THE WORK WHO WERE NOT MEMBERS OF LOCAL 2965. THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND LOCAL 2965 PROVIDES, HOWEVER, THAT EVERY EMPLOYEE OF THE INTERVENER WHO HAS SERVED A NINETY DAY PROBATIONARY PERIOD IS REQUIRED TO JOIN THE UNION AND REMAIN A MEMBER IN GOOD STANDING AS A CONDITION OF EMPLOYMENT WITH THE INTERVENER. IN THE INSTANT CASE, THE INTERVENER DID NOT, IN FACT, MAKE A REQUEST OF LOCAL 2965 TO PROVIDE CARPENTERS WITH THE NECESSARY SKILLS TO PERFORM THE JOB IN QUESTION. WE WOULD ADD THAT THERE IS NOTHING IN THE AGREEMENT REQUIRING THE INTERVENER TO MAKE SUCH A REQUEST. RATHER THE INTERVENER SECURED THE SERVICES OF TWO CARPENTERS SKILLED IN THE LAYING OF HARDWOOD FLOORING THROUGH ITS MONTREAL OFFICE.

8. IN THE LATE AFTERNOON OF NOVEMBER 21ST, 1967, THE TWO CARPENTERS REFERRED TO ABOVE REPORTED TO THE INTERVENER AT THE JOB SITE AT BROCKVILLE. ON NOVEMBER 22ND, THE INTERVENER COMMENCED TO DO THE WORK WHICH HAD BEEN SUBCONTRACTED TO IT BY THE COMPLAINANT, EMPLOYING THE TWO CARPENTERS WHO HAD BEEN PROVIDED BY THE INTERVENER'S MONTREAL OFFICE. AT ABOUT 10:00 A.M. ON NOVEMBER 22ND, STANLEY BAKER, A BUSINESS REPRESENTATIVE OF THE RESPONDENT, ARRIVED ON THE JOB SITE AND AFTER CONFERRING WITH THE TWO CARPENTERS ADVISED MR. THOMAS, THE PRESIDENT OF THE INTERVENER, AND SUBSEQUENTLY, W. T. FOLEY, THE PRESIDENT OF THE COMPLAINANT, THAT THE CARPENTERS WERE MEMBERS OF A UNION OTHER THAN THE CARPENTERS INTERNATIONAL OR ANY LOCAL THEREOF AND THAT ACCORDINGLY THEY COULD NOT WORK ON THE JOB. BAKER TOOK THE POSITION THAT IN THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE COMPLAINANT AND THE RESPONDENT, THE INTERVENER WAS REQUIRED TO USE MEMBERS OF THE RESPONDENT ON THE JOB.

9. THE EVIDENCE IS THAT ON NOVEMBER 20TH, 1967, THE COMPLAINANT AND THE RESPONDENT ENTERED INTO A COLLECTIVE AGREEMENT EFFECTIVE FROM THAT DATE UNTIL APRIL 30TH, 1970. ARTICLE 2A OF THE AGREEMENT DOES NOT PROVIDE THAT ANY SUBCONTRACTOR OF THE COMPLAINANT MUST EMPLOY MEMBERS OF THE RESPONDENT, RATHER IT PROVIDES THAT FOR WORK TO BE PERFORMED UNDER THE JURISDICTION OF THE RESPONDENT THE COMPLAINANT AGREES TO GIVE PREFERENCE TO SUBCONTRACTORS WHO HAVE A COLLECTIVE AGREEMENT WITH THE RESPONDENT. WE WOULD POINT OUT THAT THE COMPLAINANT AWARDED THE SUB-CONTRACT IN QUESTION TO THE INTERVENER ON AUGUST 7TH, 1967, SOME THREE

AND A HALF MONTHS PRIOR TO THE DATE ON WHICH THE COMPLAINANT AND THE RESPONDENT ENTERED INTO A COLLECTIVE AGREEMENT. ARTICLE 2A FURTHER PROVIDES THAT IF THE SUBCONTRACTOR DOES NOT HAVE AN AGREEMENT HE WILL BE REQUIRED TO OBSERVE THE CONDITIONS OF THE NOVEMBER 20TH, 1967 AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT. AS WE HAVE NOTED, THE INTERVENER DOES HAVE A COLLECTIVE AGREEMENT WITH LOCAL 2965.

10. IT APPEARS THAT SOME ATTEMPTS WERE MADE TO WORK OUT A MUTUALLY SATISFACTORY SETTLEMENT AMONG THE THREE PARTIES CONCERNED. WE SHOULD MENTION HERE THAT STANLEY BAKER, REPRESENTING THE RESPONDENT, CLAIMED THAT NO PARTICULAR CARPENTRY SKILLS ARE REQUIRED IN THE LAYING OF HARDWOOD FLOORS WHICH ARE NOT POSSESSED BY MEMBERS OF THE RESPONDENT. IN ANY EVENT, THESE EFFORTS WERE UNSUCCESSFUL. FOLEY THEREUPON INSTRUCTED THOMAS NOT TO PROCEED WITH THE WORK UNDER THE SUBCONTRACT BECAUSE HE (FOLEY) WAS CONCERNED THAT IF THE INTERVENER CONTINUED TO USE THE TWO CARPENTERS WHO WERE NOT MEMBERS OF LOCAL 1758 THE RESPONDENT MIGHT WITHDRAWN THOSE OF ITS MEMBERS WHO WERE EMPLOYED BY THE COMPLAINANT ON THE PROJECT AND POSSIBLY CAUSE A SHUT DOWN ON THE JOB. THOMAS COMPLIED WITH FOLEY'S REQUEST. ACCORDINGLY, NOVEMBER 22ND WAS THE ONLY DAY ON WHICH THE INTERVENER WORKED ON THE PROJECT, USING THE TWO CARPENTERS TO WHOM BAKER TOOK OBJECTION. ON NOVEMBER 23RD, THE COMPLAINANT FILED THE INSTANT COMPLAINT.

11. SUBSECTION (1) OF SECTION 66 OF THE ACT READS:

THE BOARD MAY INQUIRE INTO A COMPLAINT THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS, OR AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS, WAS OR IS REQUIRING AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION TO ASSIGN PARTICULAR WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION OR IN A PARTICULAR TRADE, CRAFT OR CLASS RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION OR IN ANOTHER TRADE, CRAFT OR CLASS, OR THAT AN EMPLOYER WAS OR IS ASSIGNING WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION, AND IT SHALL DIRECT WHAT ACTION, IF ANY, THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE COUNCIL OF TRADE UNIONS OR ANY OFFICER, OFFICIAL OR AGENT OF ANY OF THEM OR ANY EMPLOYEE SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE ASSIGNMENT OF WORK.

12. FOR OUR PURPOSES, THE RELEVANT PART OF THE SUBSECTION, STATED MORE SIMPLY, PROVIDES THAT THE BOARD MAY INQUIRE INTO A COMPLAINT THAT AN AGENT OF A TRADE UNION IS REQUIRING AN EMPLOYER TO ASSIGN PARTICULAR WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION.

FOR THE MOMENT, LET US ASSUME FOR PURPOSES OF ARGUMENT THAT THE COMPLAINANT WAS ENTITLED TO MAKE THE INSTANT COMPLAINT UNDER THE ABOVE SUBSECTION. IN THIS CASE, THE INTERVENER, AN EMPLOYER, IS BEING REQUIRED BY THE RESPONDENT, A TRADE UNION, TO ASSIGN WORK TO ITS MEMBERS. THE BOARD'S JURISDICTION, BY THE WORDING OF SUBSECTION (1), HOWEVER, IS LIMITED TO INQUIRIES INTO COMPLAINTS THAT AN EMPLOYER IS BEING REQUIRED TO ASSIGN WORK TO EMPLOYEES IN A TRADE UNION, AS OPPOSED TO MEMBERS OF A PARTICULAR TRADE UNION, THE LATTER BEING THE SITUATION BEFORE US. THIS DISTINCTION AND ITS EFFECT IN RELATION TO THE BOARD'S JURISDICTION WAS DEALT WITH BY McRUER C.J.H.C. IN HIS JUDGMENT IN CANADIAN PITTSBURGH INDUSTRIES LIMITED V H. ORLIFFE ET AL. [1961] O.W.N. 223; C.L.L.C. VOL. 2 1960-1964 ¶15,373.

13. IN THAT CASE, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LODGED A COMPLAINT UNDER SECTION 66 OF THE ACT AGAINST CANADIAN PITTSBURGH INDUSTRIES LIMITED, ALLEGING THAT THE COMPANY HAD WRONGLY ASSIGNED CERTAIN WORK TO EMPLOYEES IN ITS EMPLOY BELONGING TO THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 1783, CONTRARY TO THE TERMS OF A COLLECTIVE AGREEMENT. THE JURISDICTIONAL DISPUTES COMMISSION ORDERED THAT THE WORK BE ASSIGNED TO A COMPOSITE CREW OF IRON WORKERS AND CARPENTERS. THE EMPLOYER MOVED TO HAVE THE ORDER QUASHED ON THE GROUNDS THAT SECTION 66 DID NOT APPLY TO THE FACTS OF THE CASE SINCE THE COMPANY HAD NO EMPLOYEES IN EITHER THE IRON-WORKERS OR CARPENTERS UNION AND THAT ACCORDINGLY THE COMMISSION WAS WITHOUT JURISDICTION TO MAKE THE ORDER IT DID. McRUER C.J.H.C. UPHELD THE SUBMISSION OF THE COMPANY AND QUASHED THE ORDER OF THE COMMISSION. IN SO DOING, HE EXPRESSED HIS INTERPRETATION OF SECTION 66(1) IN THE FOLLOWING TERMS AT 329:

I THINK THE SECTION CONTEMPLATES ONLY THOSE DISPUTES THAT ARISE WITH RESPECT TO THE ASSIGNMENT OF WORK BY AN EMPLOYER AMONG THOSE THAT ARE ENGAGED ON THE WORK OVER WHICH HE HAS DIRECTION. I DO NOT THINK THE SECTION HAS APPLICATION WHERE A TRADE UNION THAT HAS NO MEMBERS EMPLOYED UNDER THE DIRECTION OF THE EMPLOYER COMPLAINS THAT WORK IS ASSIGNED TO EMPLOYEES THAT IN THE OPINION OF THAT TRADE UNION SHOULD BE DONE BY MEMBERS OF THE COMPLAINING UNION.

TO SO HOLD WOULD MEAN THAT THE COMMISSION COULD COMPEL AN EMPLOYER TO ENGAGE WORKERS TO DO WORK THAT HIS EMPLOYEES WERE PERFECTLY WILLING TO DO. IF IT WAS THE INTENTION OF THE LEGISLATURE TO GIVE THE COMMISSION SUCH WIDE POWERS TO INTERFERE WITH THE PEACEFUL RELATIONS BETWEEN THE EMPLOYER AND HIS EMPLOYEES CONCERNING WHICH NEITHER HAD MADE ANY COMPLAINT, MUCH CLEARER LANGUAGE WOULD BE NECESSARY THAN THAT USED IN SECTION 66(1).



14. WE WOULD MENTION THAT THE WORDING OF SECTION 66(1) WAS SOMEWHAT DIFFERENT WHEN IT WAS CONSIDERED BY THE CHIEF JUSTICE OF THE HIGH COURT (AS HE THEN WAS). IN ESSENCE, HOWEVER, THE SUBSECTION IS THE SAME AND THE PARTICULAR WORDING WHICH HE INTERPRETED IS IDENTICAL TO THAT OF SECTION 66(1) IN THE PRESENT LEGISLATION.

15. THE DECISION IN THE CANADIAN PITTSBURGH INDUSTRIES LIMITED CASE (SUPRA) WAS SUBSEQUENTLY MODIFIED BY THE DECISION OF GRANT J. IN THE WOOD, WIRE AND METAL LATHERS, INTERNATIONAL UNION, LOCAL 97 V ORLIFFE ET AL. [1963] 2 O.R. 698; C.L.L.C. VOL. 2 1960-1964 ¶15,495. IN THAT CASE THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 97 FILED A COMPLAINT THAT THE EMPLOYER, DOMINION SOUND EQUIPMENTS LIMITED WAS ASSIGNING PARTICULAR WORK TO EMPLOYEES WHO WERE MEMBERS OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, WHEN IT SHOULD HAVE BEEN ASSIGNED TO MEMBERS OF THE LATHERS UNION. THE JURISDICTIONAL DISPUTES COMMISSION MADE AN INTERIM ORDER ASSIGNING THE WORK. SHORTLY THEREAFTER, HOWEVER, THE COMMISSION MADE A FURTHER ORDER WHICH HAD THE EFFECT OF CANCELLING THE ORIGINAL ORDER ON THE GROUNDS THAT IT HAD NO JURISDICTION TO MAKE AN INTERIM ORDER TO INTERFERE WITH THE ASSIGNMENT OF WORK MADE BY THE EMPLOYER. THE LATHERS' UNION THEN SOUGHT AN ORDER DIRECTING THE COMMISSION TO REAFFIRM THE INITIAL ORDER.

16. GRANT J. IN CONSIDERING THE DECISION OF McRUER C.J.H.C. IN THE CANADIAN PITTSBURGH INDUSTRIES LIMITED CASE (SUPRA) QUOTED THE FOLLOWING EXTRACT FROM THAT DECISION:

THE SECTION CONTEMPLATES ONLY THOSE DISPUTES THAT ARISE WITH RESPECT TO THE ASSIGNMENT OF WORK BY AN EMPLOYER AMONG THOSE THAT ARE ENGAGED ON THE WORK OVER WHICH HE HAS DIRECTION.

(THE UNDERLINED PART WAS ITALICIZED BY GRANT J. IN HIS JUDGMENT)

THE JUSTICE OF THE HIGH COURT PROCEEDED TO COMMENT ON THE ABOVE QUOTE IN THESE WORDS AT 820:

I TAKE FROM THE LANGUAGE OF THE SAID LEARNED CHIEF JUSTICE, FOLLOWING THE ABOVE QUOTATION FROM HIS REASONS, THAT HE DID NOT MEAN THAT SUCH COMMISSION HAD NO JURISDICTION TO MAKE AN ORDER WHERE THE UNION HAD MEMBERS EMPLOYED UNDER THE DIRECTION OF THE EMPLOYER BUT ENGAGED ONLY IN OTHER ENTERPRISES. TO SO HOLD WOULD LIMIT THE JURISDICTION OF THE BOARD ONLY TO THOSE CASES WHERE THE MEMBERS OF THE DISPUTING UNIONS WERE ENGAGED ON THE PROJECT IN QUESTION AND

WHEREIN, IN MOST CASES, THE MATTERS IN DISPUTE WOULD BE TRIVIAL. IN THIS CASE, AT ALL RELEVANT TIMES THE EMPLOYER HAD IN ITS EMPLOY MEMBERS OF BOTH THE LATHERS' UNION AND THE CARPENTERS' UNION. THE LANGUAGE OF THE SECTION IS QUITE CLEAR THAT THE COMMISSION MAY MAKE AN INTERIM ORDER WITH RESPECT TO THE ASSIGNMENT OF THE WORK WHERE (AMONG OTHER CASES) AN EMPLOYER IS ASSIGNING PARTICULAR WORK TO EMPLOYEES OF ONE TRADE UNION RATHER THAN TO EMPLOYEES OF ANOTHER TRADE UNION. IT IS NOT A CONDITION PRECEDENT TO SUCH JURISDICTION OF THE COMMISSION THAT THE EMPLOYEES OF THE TRADE UNION DISCRIMINATED AGAINST MUST BE ENGAGED ON THE WORK IN QUESTION.

17. GRANT J. ACCORDINGLY HELD THAT THE COMMISSION HAD ERRED IN HOLDING THAT IT LACKED JURISDICTION TO MAKE THE ORDER BY REASON OF THE FACT THAT MEMBERS OF THE LATHERS' UNION WERE NOT EMPLOYED TO SOME EXTENT ON THE JOB IN QUESTION. HE ISSUED AN ORDER QUASHING THE LATER INTERIM ORDER OF THE COMMISSION AND DECLARED THE INITIAL INTERIM ORDER WAS VALID AND SUBSISTING. IN OTHER WORDS, THE JUDGMENT STANDS FOR THE PROPOSITION THAT AS LONG AS AN EMPLOYER HAS IN ITS EMPLOY MEMBERS OF THE DISPUTING UNIONS, REGARDLESS OF WHETHER THEY ARE EMPLOYED ON THE JOB SITE WHERE THE WORK ASSIGNMENT DISPUTE OCCURS, THE COMMISSION (AND NOW THIS BOARD) HAS JURISDICTION TO ENTERTAIN THE COMPLAINT AND TO MAKE AN INTERIM ORDER AND SUBSEQUENT DIRECTION WITH REGARD TO THE DISPUTE.

18. IN THE INSTANT CASE, THE INTERVENER, WHO IS THE EMPLOYER THAT MADE THE WORK ASSIGNMENT IN DISPUTE, HAS A PROVINCE-WIDE COLLECTIVE AGREEMENT WITH LOCAL 2965. AS OF THE DATE OF THE MAKING OF THE COMPLAINT THE INTERVENER HAD NO MEMBERS OF THE RESPONDENT IN ITS EMPLOY EITHER ON THE JOB SITE WHERE THE DISPUTE AROSE OR ON ANY OTHER PROJECT IN THE PROVINCE. FOR THAT MATTER, ACCORDING TO COUNSEL, THE INTERVENER HAS NEVER HAD MEMBERS OF THE RESPONDENT IN ITS EMPLOY ALTHOUGH THE RESPONDENT HAS ATTEMPTED ON PAST PROJECTS ON EARLIER OCCASIONS TO REQUIRE THE INTERVENER TO EMPLOY MEMBERS OF THE RESPONDENT. APPLYING THE JUDGMENT OF McRUER C.J.H.C. AND THE JUDGMENT OF GRANT J. TO THE CIRCUMSTANCES OF THE INSTANT CASE, HAD IT BEEN THE INTERVENER WHO FILED THE COMPLAINT, THE BOARD WOULD BE WITHOUT JURISDICTION TO MAKE AN INTERIM ORDER.

19. LET US NOW CONSIDER THE POSITION OF THE COMPLAINANT. THERE IS NO SPECIFIC LIMITATION IN SUBSECTION (1) OF SECTION 66 AS TO WHO CAN MAKE A COMPLAINT, EITHER AS THE SUBSECTION IS PRESENTLY WORDED OR AS IT WAS WORDED AT THE TIME THE ABOVE CITED CASES WERE DECIDED.

THAT PART OF THE JUDGMENT OF McRUER C.J.H.C., HOWEVER, WHICH WAS QUOTED BY GRANT J. IN HIS JUDGMENT AND WHICH IS QUOTED IN PARAGRAPH 16 OF THIS DECISION, SUGGESTS THAT BOTH JUDGES CONTEMPLATED THAT ONLY THE EMPLOYER OF THE EMPLOYEES WHO MADE THE WORK ASSIGNMENT WOULD BE A PARTY TO ANY JURISDICTIONAL DISPUTE BROUGHT UNDER SECTION 66 OF THE ACT. NEITHER JUDGMENT APPEARS TO ENVISAGE A COMPLAINT BEING LODGED BY AN EMPLOYER WHO HAD NOT MADE THE WORK ASSIGNMENT IN DISPUTE.

20. THE COMPLAINANT DID HAVE IN ITS EMPLOY ON THE PROJECT IN QUESTION ON THE DATE OF THE MAKING OF THE COMPLAINT MEMBERS OF THE RESPONDENT UNION AND HAS AN INTEREST IN THE DISPUTE. EVEN ASSUMING, HOWEVER, THAT THE COMPLAINANT WAS ENTITLED TO MAKE THE INSTANT COMPLAINT, IN OUR OPINION, ON THE FACTS IN THIS CASE, THE COMPLAINANT CAN BE IN NO BETTER POSITION THAT THE INTERVENER, THE EMPLOYER, WHO ACTUALLY MADE THE WORK ASSIGNMENT IN DISPUTE. THIS BEING SO, THE BOARD HAS NO MORE JURISDICTION TO DEAL WITH THE COMPLAINT THAN IF IT HAD BEEN MADE BY THE INTERVENER. THE BOARD THEREFORE FINDS IT IS WITHOUT JURISDICTION TO MAKE AN INTERIM ORDER IN THIS MATTER.

21. THE COMPLAINT, ACCORDINGLY, IS DISMISSED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13326-67-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. GLENN JANTZI LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS  
F. W. MURRAY AND O. HODGES.

APPEARANCES AT HEARING: JACK WYNTER FOR THE APPLICANT AND  
NORMAN L. MATHEWS, Q.C., AND GLENN JANTZI FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 5, 1967.

. . .

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE APPLICATION FOR CERTIFICATION HEREIN WAS MADE ON JULY 4TH, 1967.

4. IN ITS DECISION DATED JULY 20TH, 1967, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LISTS OF EMPLOYEES AND THE COMPOSITION OF THE BARGAINING UNIT. SUBSEQUENTLY, NAMELY ON OCTOBER 18TH, 1967, THE BOARD AUTHORIZED THE EXAMINER TO INQUIRE INTO THE EMPLOYMENT STATUS OF ROLAND POTVIN. THE REASONS FOR AND THE CONSIDERATIONS UNDERLYING THE SECOND EXAMINATION SHOULD BE APPARENT IN WHAT FOLLOWS.

5. PARAGRAPH 3 OF THE EXAMINER'S REPORT DATED THE 21ST DAY OF AUGUST, 1967, STATES THAT THE PARTIES AGREED THAT ONE ROLAND POTVIN SHOULD NOT BE ON THE LISTS OF EMPLOYEES OF THE RESPONDENT. THE LISTS ARE USED FOR THE PURPOSES OF THE COUNT AND THE DETERMINATION OF THE MEMBERSHIP POSITION OF THE APPLICANT.

6. THE FIRST REPORT INDICATES THAT THIS MAN HAD BEEN WORKING FULL TIME UP UNTIL JUNE 24TH. AT THAT TIME HE BECAME INJURED AND THE RESPONDENT UNDERSTOOD HE HAD SEPARATED. HOWEVER, HE RETURNED TO WORK ON JULY 6TH FOR JUST ONE DAY AND THEN LEFT. THE REPORT STATES THAT THE RESPONDENT PROPOSED AND THE APPLICANT AGREED THAT HE SHOULD NOT BE ON THE LISTS. IT SEEMED THAT THE ABOVE FACTS FORMED THE SOLE BASIS OF THE AGREEMENT.

7. THERE IS A LONG-ESTABLISHED PRACTICE OF THE BOARD USED IN DETERMINING WHETHER PERSONS WHO WERE NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION ARE TO BE INCLUDED OR EXCLUDED FOR THE PURPOSES OF THE COUNT. IN THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED CASE, 65 CLLC, ¶16, 066, THE MATTER IS PUT AS FOLLOWS:

"IT WAS ALSO POINTED OUT THAT WITH REFERENCE TO THE 2,726 PERSONS NOT AT WORK ON MAY 11TH, THE BOARD WOULD HAVE TO RULE AS TO THEIR INCLUSION OR EXCLUSION FOR PURPOSES OF THE COUNT, IN ACCORDANCE WITH ITS REGULAR PRACTICE, NAMELY, IF AN EMPLOYEE WAS NOT AT WORK WITHIN THE MONTH PRECEDING THE DATE OF THE MAKING OF THE APPLICATION, OR IF HE HAS WORKED AT SOME TIME DURING THE PRECEDING MONTH, BUT THERE IS NO DEFINITE DATE FOR HIS RETURN DURING THE MONTH FOLLOWING THE DATE OF THE MAKING OF THE APPLICATION, SUCH EMPLOYEE IS NOT INCLUDED FOR PURPOSES OF THE COUNT."

8. IN THE SYDENHAM DISTRICT HOSPITAL CASE, BOARD FILE NO. 12795-66-R, THE PRACTICE IS DISCUSSED AT SOME LENGTH AND IS SUMMARIZED AS FOLLOWS:

"IF, HOWEVER, AN EMPLOYEE IS NOT AT WORK ON THE DATE THE APPLICATION IS MADE, BOTH CONDITIONS MUST BE FULFILLED IN ORDER THAT HE MAY BE INCLUDED ON THE LIST OF EMPLOYEES FOR THE PURPOSE OF THE COUNT, THAT IS, HE MUST BE EMPLOYED WITHIN A MONTH PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION AND WITHIN THE MONTH SUBSEQUENT TO THE MAKING OF THE APPLICATION AS DETERMINED ABOVE."



9. IT APPEARED INITIALLY THAT IF THE ABOVE ESTABLISHED PRACTICE OF THE BOARD WERE APPLIED TO THE FACTS RELATING TO RONALD POTVIN AS SET OUT IN THE FIRST REPORT, HIS NAME SHOULD BE ON THE LISTS FOR THE PURPOSE OF THE COUNT AND THE DETERMINATION OF THE MEMBERSHIP POSITION OF THE APPLICANT. SINCE IT WOULD NOT BE PROPER OR FEASIBLE IN MATTERS SUCH AS THIS FOR THE BOARD TO ACQUIESCE IN ANY AGREEMENT MADE BETWEEN THE PARTIES WHICH WOULD RUN DIRECTLY COUNTER TO THE CONSISTENT AND PUBLISHED PRACTICES FOLLOWED BY THE BOARD, IT WAS CONSIDERED NECESSARY TO RE-DIRECT THE EXAMINER TO ATTEMPT TO HAVE HIM CLARIFY THE GROUNDS UPON WHICH THE AGREEMENT WAS BASED.

10. WITH RESPECT TO THE BOARD'S APPROACH TO AGREEMENTS MADE BETWEEN THE PARTIES, REFERENCE MIGHT BE HAD TO THE FONTHILL LUMBER LTD. CASE, 64 CLLC, P. 1257, WHEREIN ON PP. 1259-60 THE BOARD SAID:

"THIS BOARD, OF COURSE, HAS A DUTY TO PERFORM ITS FUNCTIONS UNDER THE LABOUR RELATIONS ACT IN A WAY WHICH, CONSISTENT WITH ITS JURISDICTION AND THE REQUIREMENTS OF THE ACT, WILL BEST SERVE IN THE PUBLIC INTEREST, TO PRESERVE AND PROMOTE THE OBJECTS OF PEACEFUL, CO-OPERATIVE AND SATISFACTORY RELATIONS BETWEEN LABOUR AND MANAGEMENT. IN OUR OPINION, IT IS WELL WITHIN THE CLEAR SPIRIT AND INTENT OF THE LABOUR RELATIONS ACT THAT, CONSISTENT WITH THE FURTHERANCE AND ATTAINMENT OF THESE ENDS, THE BOARD, WHERE PRACTICABLE, SHOULD, AS MUCH AS POSSIBLE, ASSIST AND ENCOURAGE THE PARTIES, THROUGH MUTUAL CO-OPERATION, TO SOLVE AND SETTLE THEIR OWN DIFFERENCES."

11. ATTENTION, HOWEVER, SHOULD ALSO BE DIRECTED TO THE FURTHER REMARKS OF THE BOARD IN THE FONTHILL CASE WHICH READ AS FOLLOWS:

"THE BOARD, OF COURSE, SHOULD NOT AS A MATTER OF DISCRETION, OR CANNOT AS A MATTER OF LAW, ACCEPT AND GIVE ITS SEAL OF AUTHORITY TO EVERY AGREEMENT THAT THE PARTIES MAY SEE FIT TO MAKE CONCERNING MATTERS WHICH COME BEFORE IT. NEEDLESS TO SAY, THE BOARD CANNOT ACCEPT AN AGREEMENT WHICH IS NOT AUTHORIZED BY LAW OR IS NOT IN THE PUBLIC INTEREST, OR PURPORTS TO AFFECT PERSONS WHO ARE NOT EMPLOYEES UNDER THE LABOUR RELATIONS ACT, OR CONSENTS TO THE BOARD EXERCISING A JURISDICTION WHICH IT DOES NOT POSSESS UNDER THE ACT. ALSO, OF COURSE, IF THE EFFECT OF THE AGREEMENT IS PATENTLY CONTRARY TO HOW THE BOARD ITSELF WOULD DEAL WITH THE MERITS OF THE MATTER, THE BOARD MAY, DEPENDING UPON ALL THE CIRCUMSTANCES, DECIDE THAT IT IS NOT A PROPER ONE AND REFUSE TO ACCEPT IT."

12. WITH RESPECT TO THE SECOND EXAMINER'S REPORT, DATED NOVEMBER 6TH, 1967, THE RESPONDENT, BY LETTER DATED NOVEMBER 10TH, 1967, MADE CERTAIN SUBMISSIONS WITH REGARD THERETO.

13. DURING THE COURSE OF THE SECOND EXAMINATION MR. POTVIN WAS EXAMINED. HE TESTIFIED WITH RESPECT TO CERTAIN CONVERSATIONS HE SAID HE HAD HAD WITH A MR. WEISS. MR. WEISS WAS NOT EXAMINED BY THE EXAMINER, NOR WAS ANY ATTEMPT MADE BY THE RESPONDENT TO CALL HIM AT THE TIME THE EXAMINATION WAS BEING CONDUCTED. THE RESPONDENT URGES THAT IF POTVIN'S EVIDENCE IS TO BE USED, THEN EVIDENCE SHOULD BE HEARD FROM WEISS, AND TO THIS END THE RESPONDENT PROPOSES THAT THE EXAMINER BE SENT OUT A THIRD TIME, OR THAT A HEARING BE HELD BEFORE THE BOARD AT WHICH THE RESPONDENT IS TO BE GIVEN AN OPPORTUNITY TO CALL WEISS AS A WITNESS.

14. IN OUR OPINION FULL OPPORTUNITY WAS GIVEN THE RESPONDENT TO CALL WHAT WITNESSES IT WOULD AT BOTH HEARINGS. IT MAY WELL HAVE BEEN THAT IF THE RESPONDENT HAD BEEN REPRESENTED BY COUNSEL AT THE SECOND EXAMINATION, THAT COUNSEL WOULD HAVE CALLED WEISS. BE THAT AS IT MAY, THE FACT IS, HOWEVER, THAT THE PARTIES WERE AWARE OF THE SECOND EXAMINATION AND ITS PURPOSES AND WERE, TO REPEAT, AFFORDED AN OPPORTUNITY TO CALL WITNESSES. THE RESPONDENT'S REQUEST TO CALL WEISS NOW INVOLVES FURTHER DELAY IN THE PROCEEDINGS AND WOULD INVITE INTERMINABLE PROCEEDINGS INVOLVING OVERLOOKED OR FORGOTTEN WITNESSES IN OTHER CASES.

15. IN ANY EVENT, IN VIEW OF THE RECORDED AGREEMENT OF THE PARTIES SET OUT IN THE FIRST REPORT THAT POTVIN HAD QUIT PRIOR TO THE MAKING OF THE APPLICATION, IT IS DIFFICULT TO SEE WHAT PURPOSE COULD BE SERVED IN CALLING WEISS. IF IT IS THE RESPONDENT'S DESIRE TO CONFIRM POTVIN'S TESTIMONY, THAT IS UNNECESSARY BECAUSE THAT TESTIMONY, AS IT NOW STANDS, SUPPORTS THE RECORDED AGREEMENT OF THE PARTIES. IF THE RESPONDENT'S PURPOSE IS TO REPUDIATE THE RECORDED AGREEMENT OF THE PARTIES, WITH RESPECT TO THE EMPLOYMENT STATUS OF POTVIN IT RUNS HEAD ON INTO THE CLEARLY-ENUNCIATED POSITION AS TO UNILATERAL REPUDIATION SET OUT IN THE Fonthill LUMBER CASE PREVIOUSLY REFERRED TO. IT IS TO BE RECOLLECTED THAT, ACCORDING TO THE EXAMINER'S FIRST REPORT, THE RESPONDENT - NOT THE APPLICANT - PROPOSED THAT POTVIN'S NAME SHOULD NOT BE ON THE LIST. WE THINK IT ONLY PROPER TO HAVE ASSUMED THAT THIS PROPOSAL WAS BASED UPON CORRECT REASONS AND MOTIVES AND, HAVING BEEN DONE WITH THE ADVICE OF COUNSEL, THAT THE FACTS, UPON WHICH THE AGREEMENT WAS FOUNDED INsofar AS THE RESPONDENT WAS CONCERNED, WERE SUCH AS TO PROPERLY SUPPORT THE PROPOSAL. IT WAS SIMPLY TO CONFIRM THAT ASSUMPTION THAT THE SECOND EXAMINATION WAS HELD.

16. THE BOARD, UPON A REVIEW OF THE CORRESPONDENCE OF THE RESPONDENT DATED NOVEMBER 10TH AND 22ND, 1967, AND THAT OF THE APPLICANT DATED NOVEMBER 10TH AND 20TH, 1967, IS PREPARED TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORTS. THE BOARD, HOWEVER, DECLINES THE REQUEST TO SEND OUT THE EXAMINER FOR THE PURPOSE OF INTERVIEWING GERVAIS, OR TO HEAR EVIDENCE FROM GERVAIS AT ANY HEARING THAT MAY BE HELD, FOR THE REASONS REFERRED TO IN PARAGRAPH 3 HEREOF.

17. UNLESS THE RESPONDENT NOTIFIES THE BOARD WITHIN 10 DAYS OF THE DATE HEREOF THAT IT REQUIRES A HEARING TO MAKE REPRESENTATIONS WITH RESPECT TO THE EXAMINER'S REPORTS, THE BOARD WILL PROCEED TO DEAL WITH THE MATTER ON THE BASIS OF THE MATERIAL BEFORE IT.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

13902-67-U: JAMES SPEIRS (COMPLAINANT) v. A. M. WOOLFREY, OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN, TORONTO, BRITISH AMERICAN OIL CO. LTD. (OIL & CHEMICAL CO.) K.G. COOKE, HAMILTON, CANADIAN WESTINGHOUSE LTD. (ELECTRICAL INDUSTRY) L.G. KERR, DRYDEN DRYDEN PAPER CO. LTD. (PULP & PAPER INDUSTRY) N. H. WAGE, COPPER CLIFF, INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER, HAMILTON, STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. LTD. (STEEL INDUSTRY) (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 11, 1967.

1. THIS IS A REQUEST, PURSUANT TO SECTION 46(2) OF THE BOARD'S RULES OF PROCEDURE, FOR THE BOARD TO REVIEW ITS DECISION DATED NOVEMBER 23, 1967 IN THIS MATTER.
2. THE ORIGINAL COMPLAINT, MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, ALLEGED A VIOLATION OF SECTION 48. IN HIS REQUEST FOR REVIEW THE COMPLAINANT STATES THAT HE IS RELYING ON THE WORDS "REPRESENTATION OF EMPLOYEES IN A TRADE UNION" AS THEY APPEAR IN THAT SECTION. THUS, THE COMPLAINANT IS ALLEGING THAT THE RESPONDENTS PARTICIPATED IN OR INTERFERED WITH THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION. AFTER CAREFULLY CONSIDERING BOTH THE COMPLAINT AND THE REQUEST FOR REVIEW, WE ARE UNABLE TO FIND ANYTHING THEREIN WHICH WOULD SUGGEST THAT THE RESPONDENTS IN SERVING ON THE GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES AND PARTICIPATING IN ITS INTERIM REPORT COULD BE SAID TO HAVE INTERFERED WITH THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION.
3. THE COMPLAINANT NOW SEEKS A DIFFERENT REMEDY THAN THAT REQUESTED IN HIS ORIGINAL COMPLAINT. THE REQUEST NOW IS FOR "WRITTEN CONSENT FROM THE BOARD TO ALLOW ME THE RIGHT TO INSTITUTE PROSECUTION". WHATEVER POWERS THE BOARD MAY HAVE UNDER SECTION 65(4) OF THE LABOUR RELATIONS ACT, IT DOES NOT HAVE THE POWER TO GIVE LEAVE TO INSTITUTE A PROSECUTION IN A COMPLAINT UNDER THAT SECTION.
4. IN THE RESULT, THEN, AND PURSUANT TO SECTION 46(4)(c) OF THE BOARD'S RULES OF PROCEDURE, THE BOARD HEREBY CONFIRMS ITS DECISION DATED NOVEMBER 23, 1967, DISMISSING THE COMPLAINT.

13966-67-U: FRANK MAULE (COMPLAINANT) V. A.M. WOOLREY OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN TORONTO BRITISH AMERICAN OIL LTD (OIL & CHEMICAL CO LTD.) K. G. COOKE HAMILTON CANADIAN WESTINGHOUSE LTD (ELECTRICAL INDUSTRY) N.H. WAGE COPPER CLIFF INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER HAMILTON STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE SAULT STE MARIE ALGOMA STEEL CO LTD. (STEEL INDUSTRY) (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS  
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD:                      DECEMBER 28, 1967.

1.            THE COMPLAINANT, FRANK MAULE, HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED DECEMBER 8, 1967 IN WHICH THE BOARD, PURSUANT TO SECTION 46 (1) OF ITS RULES OF PROCEDURE, DISMISSED THE COMPLAINT OF MR. MAULE WHICH WAS FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINT HAD ALLEGED A VIOLATION OF SECTION 48 OF THE ACT. THE COMPLAINT WAS DISMISSED BOTH ON THE GROUND THAT THERE WAS NOTHING CONTAINED IN IT WHICH SUGGESTED A VIOLATION OF SECTION 48 AND ON THE FURTHER GROUND THAT THE BOARD HAD NO JURISDICTION IN A COMPLAINT UNDER SECTION 65 TO GRANT THE RELIEF REQUESTED, NAMELY, CONSENT TO INSTITUTE A PROSECUTION.

2.            ALTHOUGH THE COMPLAINANT STATES THAT HE IS REQUESTING REVIEW, IT IS CLEAR FROM THE REQUEST THAT HE IS REALLY SEEKING TO AMEND HIS COMPLAINT. THE REQUEST READS IN PART AS FOLLOWS:

SINCE RECEIVING YOUR LETTER DATED DECEMBER 8, 1967, IT HAS BECOME EVIDENT THAT WE HAVE BEEN SUBMITTING THE COMPLAINT TO THE LABOUR RELATIONS BOARD IN AN INCORRECT MANNER.

WE WISH THE STATEMENT TO READ AS FOLLOWS:

THE SAID MEMBERS OF THE GENERAL ADVISORY COMMITTEE, ON INDUSTRIAL TRADES IN GENERAL INDUSTRY, DID VIOLATE SECTION 65 (A) OF THE LABOUR RELATIONS ACT BY DISCRIMINATION AND INTIMIDATION OF CRAFTSMEN, BY RECOMMENDING TO THE DEPARTMENT OF LABOUR CHANGES IN CONDITIONS OF EMPLOYMENT OF TRADESMEN IN GENERAL INDUSTRY, CONTRARY TO THE LABOUR RELATIONS ACT, SECTION 65.

THE RELIEF NOW REQUESTED WILL BE UNDER SECTION 65, SUB-CLAUSE 5, OF THE ONTARIO RELATIONS ACT.



3. ASSUMING, BUT WITHOUT DECIDING, THAT THE COMPLAINANT IS ENTITLED TO AMEND THE COMPLAINT, THE PROPOSED AMENDMENT DOES NOT ADVANCE HIS CAUSE. IN THE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, A COMPLAINT WAS FILED UNDER SECTION 65 OF THE ACT. THE ONLY SECTION OF THE ACT ALLEGED TO HAVE BEEN VIOLATED WAS SECTION 65, SUBSECTION 1. THE BOARD SAID:

...INDEED, IT WOULD APPEAR THAT THE COMPLAINANT IS NOT RESTING ITS COMPLAINT ON A VIOLATION OF THE UNFAIR PRACTICE SECTIONS OF THE ACT BUT IS TAKING THE POSITION THAT THE LANGUAGE OF SUBSECTION 1 OF SECTION 65 OF THE ACT COMPREHENDS A SITUATION WHERE A COMPLAINANT ALLEGES THAT AN EMPLOYER HAS DISCRIMINATED AGAINST AN EMPLOYEE ON GROUNDS OTHER THAN THOSE THAT FALL WITHIN THE EXPRESS PROHIBITIONS UNDER THE ACT. IN OUR OPINION, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED, OR OTHERWISE DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT. THE COMPLAINT IS ACCORDINGLY DISMISSED.

ACCORDINGLY, THE PROPOSED AMENDMENT OF THE PRESENT COMPLAINT WOULD NOT ASSIST THE COMPLAINANT.

4. FURTHERMORE, ALTHOUGH THE COMPLAINANT NOW STATES THAT THE RELIEF HE IS SEEKING IS UNDER SUBSECTION 5 OF SECTION 65, THAT SECTION ONLY APPLIES WHEN AN ORDER IS MADE UNDER SUBSECTION 4(A) OF THE SAID SECTION. THUS, THE COMPLAINANT HAS STILL NOT SET FORTH THE RELIEF WHICH HE IS SEEKING IN THIS COMPLAINT.

5. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD, PURSUANT TO SECTION 46(4)(c) OF ITS RULES OF PROCEDURE, CONFIRMS ITS DECISION IN THIS MATTER DATED DECEMBER 8, 1967, DISMISSING THE COMPLAINT.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

13910-67-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L. (APPLICANT) v. UNI-FORM BUILDERS LIMITED (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER).

7. THE APPLICANT APPLIED FOR AN ALL EMPLOYEE BARGAINING UNIT EXCEPTING THEREFROM LABOURERS, NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF. ANOTHER UNION PRESENTLY HOLDS THE BARGAINING RIGHTS FOR CONSTRUCTION LABOURERS, APART FROM CONSTRUCTION LABOURERS, THE EXAMINER'S REPORT REVEALS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE RESPONDENT HAD IN ITS EMPLOY CARPENTERS, A TRUCK DRIVER AND OPERATORS OF HEAVY EQUIPMENT. HAVING REGARD TO THE BOARD'S POLICY AS SET OUT IN THE WINTER & SON CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 889, THE BOARD FINDS UNDER THE PROVISIONS OF SUBSECTION (1) OF SECTION 6 OF THE LABOUR RELATIONS ACT THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES, TRUCK DRIVERS AND ALL EMPLOYEES ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, EMPLOYED BY THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13978-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) v. HEADWAY BUILDERS ONTARIO LIMITED (RESPONDENT).

UNTIL RECENTLY, THE BOARD HAS NOT HAD A FIXED AREA CENTERING ON BROCKVILLE. HOWEVER, IN CITY CONCRETE FORMING LIMITED BOARD FILE 13693-67-R DATED DECEMBER 18, 1967, THE BOARD INDICATED THAT THE APPROPRIATE UNIT SHOULD BE THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURG IN THE COUNTY OF GRENVILLE.

HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURG IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

STATISTICAL TABLES FOR DECEMBER 1967

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		DECEMBER 1967	1ST 9 MONTHS OF FISCAL YEAR 1967-68	OF FISCAL YEAR 1966-67
I.	CERTIFICATION	41	696	706
II.	DECLARATION TERMINATING BARGAINING RIGHTS	2	69	30
III.	DECLARATION OF SUCCESSOR STATUS	3	16	9
IV.	DECLARATION THAT STRIKE UNLAWFUL	1	31	26
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	12	1
VI.	CONSENT TO PROSECUTE	2	81	70
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	8	134	82
VIII.	MISCELLANEOUS	<u>7</u>	<u>60</u>	<u>51</u>
TOTAL		<u>64</u>	<u>1099</u>	<u>975</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		DECEMBER 1967	1ST 9 MONTHS OF FISCAL YEAR 1967-68	OF FISCAL YEAR 1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		52	663	700

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		DECEMBER 1967	1ST 9 MTHS OF FISCAL YR. 1967-68	1966-67
I.	CERTIFICATION	60	718	743
II.	DECLARATION TERMINATING BARGAINING RIGHTS	15	67	26
	DECLARATION OF SUCCESSOR STATUS	-	12	9
	DECLARATION THAT STRIKE UNLAWFUL	1	31	21
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	-	12	1
VI.	CONSENT TO PROSECUTE	1	81	54
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	12	137	92
VIII.	MISCELLANEOUS	<u>3</u>	<u>56</u>	<u>52</u>
TOTAL		<u>92</u>	<u>1114</u>	<u>998</u>



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	DECEMBER 1967	1ST 9 MTHS 1967-68	FISCAL YR. 1966-67	DECEMBER 1967	1ST 9 MTHS 1967-68	FISCAL YR. 1966-67
I. <u>CERTIFICATION</u>						
GRANTED	37	504	546	1522	17393	15573
DISMISSED	16	156	133	798	10101	10304
WITHDRAWN	<u>7</u>	<u>58</u>	<u>64</u>	<u>79</u>	<u>1247</u>	<u>925</u>
TOTAL	<u>60</u>	<u>718</u>	<u>743</u>	<u>2399</u>	<u>28741</u>	<u>26802</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	9	31	15	365	738	494
DISMISSED	6	34	11	84	935	279
WITHDRAWN	<u>-</u>	<u>2</u>	<u>-</u>	<u>-</u>	<u>41</u>	<u>-</u>
TOTAL	<u>15</u>	<u>67</u>	<u>26</u>	<u>449</u>	<u>1714</u>	<u>773</u>

\*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATION FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>DECEMBER</u>	<u>1ST 9 MTHS OF FISCAL YR.</u>	
		<u>1967</u>	<u>1967-68</u>	<u>1966-67</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	1	3	3
	DISMISSED	-	3	-
	WITHDRAWN	-	25	18
	TOTAL	<u>1</u>	<u>31</u>	<u>21</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	-
	WITHDRAWN	-	11	1
	TOTAL	<u>-</u>	<u>12</u>	<u>1</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	5	7
	DISMISSED	-	8	9
	WITHDRAWN	1	68	38
	TOTAL	<u>1</u>	<u>81</u>	<u>54</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>DECEMBER</u> <u>1967</u>	<u>1ST 9 MTHS</u> <u>1967-68,</u>	<u>FISCAL YR.</u> <u>1966-67</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	12	14
POST-HEARING VOTE	4	33	29
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	2	11	9
POST-HEARING VOTE	2	29	48
BALLOTS NOT COUNTED	-	3	-
 TOTAL	<u>9</u>	<u>88</u>	<u>100</u>

\*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>DECEMBER</u> <u>1967</u>	<u>1ST 9 MTHS</u> <u>1967-68</u>	<u>FISCAL YR.</u> <u>1966-67</u>
*RESPONDENT UNION SUCCESSFUL	-	1	4
RESPONDENT UNION UNSUCCESSFUL	<u>4</u>	<u>15</u>	<u>12</u>
 TOTAL	<u>4</u>	<u>16</u>	<u>16</u>

\*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.







BINDING SECT. APR 7 1972



